This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

PRESENTED BY
THE PUBLISHER

THE UNIVE BRARIES

HD
6250
.U52
N31
v.4

INDEX

The Child Labor Bulletin

VOLUME IV

MAY, 1915—FEBRUARY, 1916

NOTE.—Words printed in capitals indicate titles of articles.

Adler, Dr. Felix. ANNUAL ADDRESS OF CHAIRMAN. 92

SEVEN SINS OF CHILD LABOR. 126

"AGED 12, HAS WORKED TWO YEARS." 171

Beck, Hon. James D. ENFORCEMENT IN WISCONSIN. 100

BRIEF FOR THE KEATING-OWEN BILL, A. Parkinson, Thomas I. 219

CALIFORNIA CHILD LABOR PROBLEMS. Hine, Lewis W. 114

CHILD, A WARD OF THE NATION, THE. Maltbie, William H. 66

CHILD LABOR AND ILLITERACY. Kelley, Mrs. Florence. 16

Child Labor Day. 149

CHILD LABOR IN THE SUGAR-BEET FIELDS OF COLORADO. Clopper, Edward N., and Hine, Lewis W. Illustrated. 176

Clark, David. DEMAND FOR A SQUARE DEAL, A. 37

Clopper, Edward N. and Hine, Lewis W. CHILD LABOR IN THE SUGAR-BEET FIELDS OF COLORADO. Illustrated. 176

CONSTITUTIONALITY OF THE FEDERAL CHILD LABOR LAW. MacChesney, Nathan William. 155

COOPERATIVE ADMINISTRATION OF CHILD LABOR LAWS. Herkner, Anna. 19

COURT DECISIONS AFFECTING CHILD LABOR. White, Sophie D. 207

DeGroot, E. B. RIGHT TO PLAY, THE. 122

DEMAND FOR A SQUARE DEAL, A. Clark, David. 37

Editorial Notes. 137; 168

EFFECT OF UNIFORM STANDARDS ON INTERSTATE COMPETITION, THE. Kendall, Henry P. 27

ELEVENTH ANNUAL REPORT OF THE GENERAL SECRETARY. 144

ENFORCEMENT IN WISCONSIN. Beck, Hon. James D. 100

Exhibits. 150

Herkner, Anna. COOPERATIVE ADMINISTRATION OF CHILD LABOR LAWS. 19

Hine, Lewis W. CALIFORNIA CHILD LABOR PROBLEMS. 114

Hine, Lewis W. and Clopper, Edward N. CHILD LABOR IN THE SUGAR-BEET FIELDS OF COLORADO. Illustrated. 176

Hughes, Bishop Edwin H. SOCIAL RESPONSIBILITY FOR CHILD LABOR. 97

Investigations. 146

Kelley, Mrs. Florence. CHILD LABOR AND ILLITERACY. 16

RESPONSIBILITY OF THE FEDERAL GOVERNMENT. 107

Kendall, Henry P. EFFECT OF UNIFORM STANDARDS ON INTERSTATE COMPETITION, THE. 27

Legislation. 145

MacChesney, Nathan William. CONSTITUTIONALITY OF THE FEDERAL CHILD LABOR LAW. 155

Maltbie, William H. CHILD, A WARD OF THE NATION, THE. 66

Membership. 151

National Child Labor Committee. STATEMENT IN REPLY TO DAVID CLARK. 44

NATIONAL CHILDREN'S CHARTER. A Symposium. 55

NEW IDEALS IN THE SCHOOLS. Peixotto, Dr Jessica B. 118

Parkinson, Thomas I. BRIEF FOR THE KEATING-OWEN BILL, A. 219

PRECEDENTS FOR FEDERAL CHILD LABOR LEGISLATION. 72

Peixotto, Dr. Jessica B. NEW IDEALS IN THE SCHOOLS. 118

PROCEEDINGS OF THE ELEVENTH ANNUAL CONFERENCE. Part. I. 5
Part II. 89

Publicity. 150

RESPONSIBILITY OF THE FEDERAL GOVERNMENT. Kelley, Mrs. Florence. 107

RIGHT TO PLAY, THE. DeGroot, E. B. 122

SEVEN SINS OF CHILD LABOR, THE. Adler Dr. Felix. 126

SOCIAL RESPONSIBILITY FOR CHILD LABOR. Hughes, Bishop Edwin H. 97

SOME SECONDARY CONSIDERATIONS. Swift, Wiley H. 69

Treasurer's Report. 152

White, Sophie D. COURT DECISIONS AFFECTING CHILD LABOR. 207

National Child Labor Committee

105 East 22d Street, New York

PRESS OF CLARENCE S. NATHAN, INC., NEW YORK

The
Child Labor Bulletin

Volume Four
Number One

MAY, 1915

Issued Quarterly
Price $2 per Year

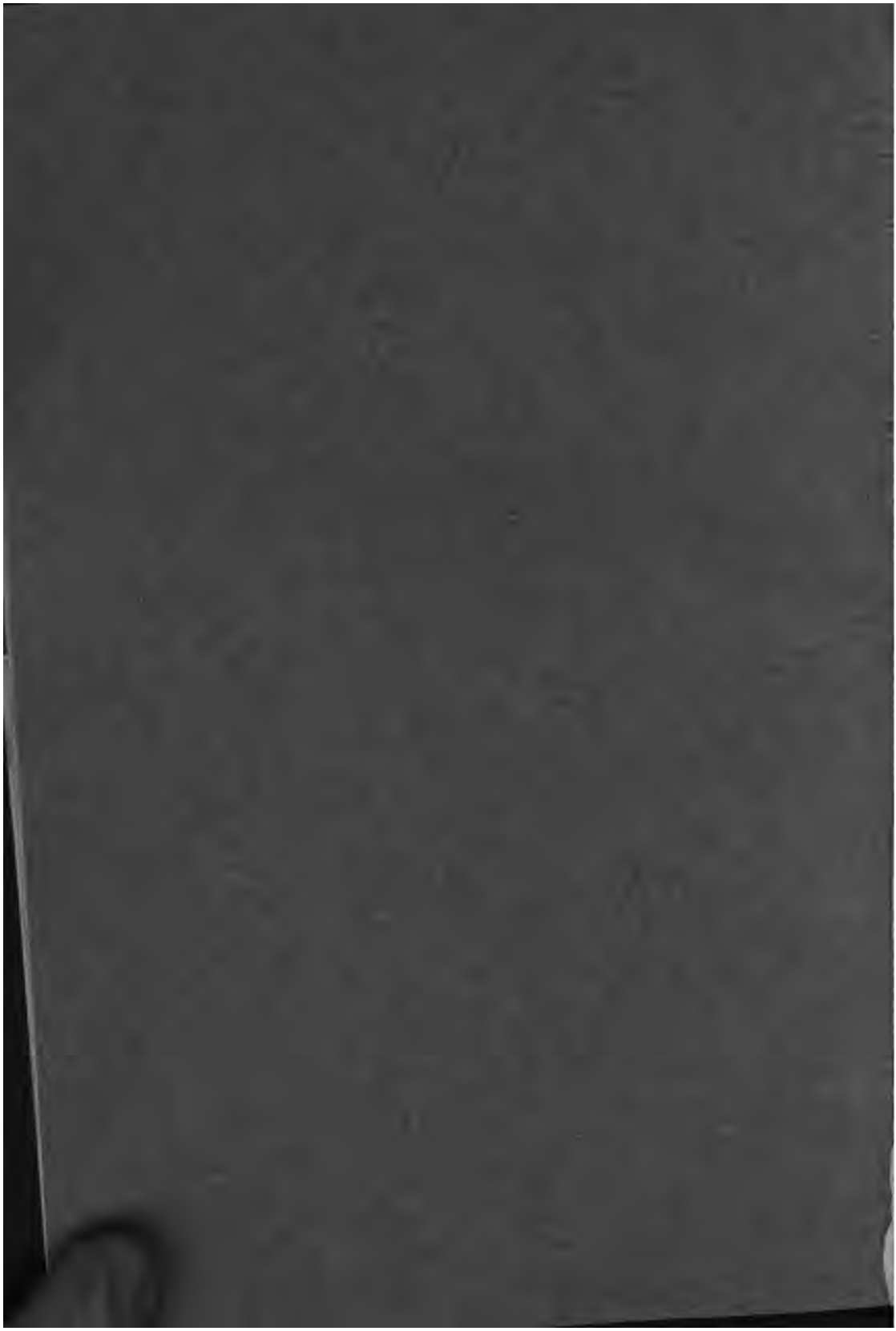
GENERAL LIBRARY
JUN 7 1915
UNIV. OF MICH.

PROCEEDINGS
OF THE
ELEVENTH
ANNUAL CONFERENCE
(PART I)

PUBLISHED BY
National Child Labor Committee
INCORPORATED
105 EAST 22d STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1910, at the Postoffice at New York, N. Y., under the Act of August 24, 1912

THIS NUMBER, FIFTY CENTS



The Child Labor Bulletin

Volume Four
Number One

MAY, 1915

Issued Quarterly
Price $2 per Year

PROCEEDINGS OF ELEVENTH ANNUAL CONFERENCE ON CHILD LABOR (PART I)

At Washington, D. C., January 5th and 6th, 1915

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

1915

COPYRIGHT 1915
BY THE
NATIONAL CHILD LABOR
COMMITTEE

PRESS OF CLARENCE S. NATHAN, INC., NEW YORK

CONTENTS

		PAGE
I.	REPORTS FROM THE FIELD	5
II.	IMMEDIATE NEEDS IN CHILD LABOR REFORM	16
	CHILD LABOR AND ILLITERACY—*Mrs. Florence Kelley*	16
	COOPERATIVE ADMINISTRATION OF CHILD LABOR LAWS—*Anna Herkner*	19
	DISCUSSION	24
III.	THE FEDERAL CHILD LABOR BILL	26
	THE EFFECT OF UNIFORM LABOR STANDARDS ON INTERSTATE COMPETITION—*Henry P. Kendall*	27
IV.	CHILD LABOR TO-DAY	36
	A DEMAND FOR A SQUARE DEAL—*David Clark*	37
	STATEMENT—*National Child Labor Committee*	44
	DISCUSSION	49
V.	SYMPOSIUM ON A NATIONAL CHILDREN'S CHARTER	55
VI.	THE CHILD, A WARD OF THE NATION	66
	THE CHILD, A WARD OF THE NATION—*William H. Maltbie*	66
	SOME SECONDARY CONSIDERATIONS—*Wiley H. Swift*	69
	PRECEDENTS FOR FEDERAL CHILD LABOR LEGISLATION—*Thomas I. Parkinson*	72

304370

I said, "I am poor this year, and the War is hard,
I can not give to the things I love to aid.
So this must go, and this, in the great discard,
And the children must suffer too, I am much afraid."

But I didn't know how they cry in the night,
And pluck at your skirts and mourn,
How they cry with the voice of your heart's delight,
And the faces your dead have worn.

There are boys that work all night in the crystal dust,
There are girls who spin all day at the whirring wheels,
And how shall I face my dead with my broken trust,
When the "Inasmuch as ye did it not," reveals?

I couldn't bear their cry in the night,
The clutch of their little hands.
I must do my best with the widow's mite
To loosen the iron bands.

L. B.

First Session: Reports from the Field

Samuel McCune Lindsay, Vice-Chairman of the National Child Labor Committee, Presiding

---

The conference opened Tuesday morning, January 5. In the absence of Dr. Adler, Chairman of the Committee, Dr. Lindsay, the Vice-Chairman, presided. DR. LINDSAY reminded the delegates that the second annual conference (1906) had been held in the same room, a meeting from which interest in child labor spread to all parts of the country. Washington, Dr. Lindsay said, is naturally the place from which we expect educational influences on important topics to go out to the rest of the country, and although it is connected in the popular mind with political activities, the work of the National Child Labor Committee has never been political but has been rather to establish a free, disinterested forum for the discussion of child labor and other problems of child welfare. Dr. Lindsay introduced MR. OWEN R. LOVEJOY, General Secretary of the National Child Labor Committee, who gave his annual report and reviewed briefly the Committee's legislative program for the year. Besides outlining bills pending in state legislatures, Mr. Lovejoy called attention to the passage of a good child labor law by the initiative in Arkansas. At the close of Mr. Lovejoy's report, DR. LINDSAY said he considered the Arkansas law especially significant because in its passage the will of four-fifths of the people of the state was actually registered, and the majority of those people were in favor of the standard proposed for the protection of children. "If we had the same machinery for registering the public will in every state of the Union," said Dr. Lindsay, "if we could make the machinery of government work always in response to public feeling on this question, we should have the same results. We find a large percentage in every community ready to express themselves on this subject, and a majority in favor of the standards we advocate."

Dr. Lindsay then called on MISS ESCHENBRENNER, Membership Secretary, who said: "Every new member contributing to the support of the National Child Labor Committee brings more strength

to the work, more zeal to the workers. So we look upon the 968 new members gained in the last fiscal year as 968 joyful experiences. But why were there not more? Never has our Committee begun the work of a new fiscal year with better equipment, larger opportunity, and—less money in the treasury. On October first the bank balance for what a leading newspaper calls 'the most important problem before the American people,' was just $313.35, and the Committee's membership numbered 8,733. Why should there be in this big, prosperous, generous country only 8,700 people who care enough for the working children to support the only movement that can reach them? Why are not more of our 90,000,000 citizens helping?

"A recent trip through several states makes me answer, 'Because they do not know.' I met scores of well-to-do, intelligent, well-intentioned people who seemed utterly unaware of the existence of the problem. Others knew and confessed they had done nothing because 'No one ever asked me to help.' Others had 'wanted to but never got to it,' like the woman who subscribed saying, 'I'm ashamed I didn't begin ten years ago.' Many had never stopped to realise that feelings harrowed by vivid child labor stories in magazines, unless they result in action, do not lift the yoke from the child. Some had subscribed for a year or two and felt their share was done—though no fireman would dare stop shoveling coal on the Limited when it takes the grade.

"One cold, stormy night, I met a seven-year-old newsboy in Minneapolis, hoarsely crying that his late edition told all about the 'Bedlam Relief Fund.' He couldn't read, nor did it matter much to him whether 'Bedlam' or Belgium got the $70,000 his generous city raised for the war sufferers. 'Gee,' said he, 'if I had *seventy cents* I'd go and have some fun.' Now his idea of fun was the same that landed many newsies before him from the Twin Cities in the state reformatory at Red Wing. One who has studied its records tells me that out of 200 inmates 175 had been newsboys. (So does the public have to pay.)

"Often in discussing the moral danger of street trading which is unrestricted in many of our larger communities, wealthy, well-meaning men and women have said that they are opposed to 'taking the very bread out of the little ones' mouths by robbing them of their work.' They are not ungenerous people. They feed the

unemployed, perhaps even wondering why there are so many unemployed. But curiously enough it is hard for the average mind to grasp the significance of child work. The sheltered mother, who surrounds her child with every comfort and opportunity, can not understand why, for economic as well as humane reasons, the poor child's need of food and clothing must be met without the child's being exhausted by working for them. The relation of the 'child in the factory' to the 'father in the breadline'; the fact that grown-ups are too often broken down because as boys and girls they had done the work of men and women—all this has to be proved to her.

"I found no stauncher friend for the working child than one overworked minister who tells that he began when 9 years old to work in a store long hours each day, and at night for weeks before the holidays. Late one Christmas Eve he was found on the street where he had fallen exhausted on his way home. When I met him, he was recovering from a nervous breakdown; his little boy's darned stockings spoke eloquently of family economy; yet, almost joyfully, he offered his subscription and his service in developing a membership campaign in his city.

"There is just one way to solve this treasury famine that constantly handicaps our work: Our 8,700 members who like this minister know, *feel* what child labor means, might be the human dynamic force in arousing those many others who should be helping us. The American people know they need a biscuit; they can not get away from it, for every newspaper, magazine, and billboard tells them so. *You* know with us what the working child needs and why. And even if we had thousands of dollars to spend on advertising, our printed appeals could never carry as far as your words colored by your personal interest in the work.

"With the federal child labor bill before Congress, with no state in the Union completely protecting all young children from exploitation, I am reminded of the prayer of the little London waif, 'O Lord, if yer ever felt yer'd like to 'elp a feller, now's yer chance, O Lord!'

"Now is your chance, members of the National Child Labor Committee. We need more funds to do the work, more members to contribute these funds. Where are they? Who are they? What will *you* do to help us find them?"

Following Miss Eschenbrenner, MR. RICHARD K. CONANT, Secretary of the Massachusetts Child Labor Committee, reported on the legislative situation in his state and especially on the 8-hour law which was passed year before last. On this subject he said: "The experience of last year when we were successful in holding the 8-hour law and in showing it to be practicable proves that this law can be enacted in any other textile state with success. When the law went into effect many manufacturers discharged all their children under 16. Within a week in some cases, and in nearly all cases within two or three months, children were reemployed under the 8-hour law. By December 28,000 under 16 were employed not more than 8 hours a day. Previously there had been about 31,000 children employed.

"Those opposed to the law all sent their representatives to the next Legislature to repeal the law. The hearings were interesting because we got so many working people in our favor. By May we had turned the tide of public sentiment and when the first vote was taken in the House, it was found we would win by two to one. On the roll call it was found we would win three to one. Whereupon an unusual thing happened. At the end of the roll call twenty-five of our opponents arose and, being recognized separately, said they had voted for the repeal but now wanted to change and vote against the repeal.

"The member of the Board of Labor and Industries who attacked us in a minority report and said 17,000 children had been thrown out of work did not appear at the hearing. Two widows from New Bedford who were produced by the other side at the hearing said their children had been discharged when the law went into effect, but when asked if they were still out of work admitted they had been reemployed.

"I have a piece of information which I should like to pass on. It came from Mr. Woodbury, Secretary of the National Association of Cotton Manufacturers, which represents the northern and southern textile mills, with headquarters in Boston. I asked whether child labor increased or decreased the cost of production in cotton mills. He said the general opinion among manufacturers was that child labor is not economically profitable."

MR. WILEY H. SWIFT, Field Secretary for North and South Carolina, was called on next for his report. He said: "At the

present time I think the South Carolina situation is more hopeful than that of North Carolina. I am pretty certain that South Carolina at the meeting of the General Assembly will enact a compulsory education law for children from 8 to 14, requiring attendance for the full term of the public school. I think that following that there will be a law amending the child labor law to make the age limit 14 instead of 12 as it is now. Running with that will be another amendment requiring work permits and registration for all children under 16 rather than 14 as it is now.

"In North Carolina I do not think the outlook is quite so good. We will probably introduce a bill making 14 the age limit, providing an 8-hour day for children under 16, and giving us inspectors under the Department of Labor. These are some of the indications that we are moving. Another indication of progress is that many of the newspapers are taking sides on the question. Some have openly espoused better child labor legislation. Some with rather peculiar interests are shoving out an editorial every two or three days against this horrible doctrine that we should prohibit children up to 14 from working. You will not be surprised when I tell you that we have a few mills in North Carolina that have lately announced that they will employ no children under 13, for that has been the law in the state for ten years. They are just coming to the point of obeying the law after ten years so we have reason to be hopeful. I have serious doubts as to the passage of any substantial legislation in North Carolina this year. We are going to see the hardest fight we have ever had and I am afraid we may be defeated, but I have faith that we will not be defeated more than three or four times more because this is about the sixth time now."*

MR. GEORGE A. HALL, Secretary of the New York Child Labor Committee, then gave his report. He said in part: "A year ago last winter in New York we had a flood of new laws passed at the request of the Factory Investigating Commission. This brought many new responsibilities, created new positions and new lines of work, so it is not surprising that the legislature last year did not pass many laws affecting children. There were two bills of importance. One was the extension of the 8-hour day, passed eight

* The South Carolina Legislature passed a compulsory school attendance law (but defeated the child labor bill) in February. The North Carolina Legislature defeated bills to improve the child labor and compulsory school attendance laws and to provide factory inspection.

years ago for children in factories, to apply to children in mercantile establishments. The other was a law which affects only the children of New York City, merging the work of the school department with the school census board to make one bureau of attendance to enforce compulsory education.

"In the matter of the number of children going to work there has been an improvement. A year ago last October the new law became effective changing the educational standard for children. They must now finish the sixth year work and be ready for what is called in our system grade 7A. In New York City that has reduced the number of children going to work by 30 per cent, making the number for last year 32,000 as against 45,000 before.

"Another point of encouragement has been the creation of a new position, Chief of the Division of Employment Certificates, in the Department of Health. Miss Minor, the agent of the Child Labor Committee who has served in the Department of Health as unofficial adviser and friend, has been given provisional appointment to this position. This will bring about some uniformity of standards and with the centralisation of authority in the Bureau of Attendance, already mentioned, will help to secure better enforcement of the law. An unofficial advisory committee has been started to help the Bureau, and three members of the Child Labor Committee are on that.

"There has been a large increase in the demand for the scholarships given by the Committee. Previously we had about 200 applications. Last year we had 500, and we gave for scholarships an amount aggregating something like $4,200 as against $2,900 the year before. This went to children between 14 and 16 upon condition they attended school regularly. The money was privately contributed by friends of the work. In our up-state work, Mr. Edwards has been instrumental in starting inquiries in Syracuse and Buffalo as to the whole school situation and the truancy laws. As to our coming plans, I do not feel there are any very radical changes to be made at this time. We believe emphasis should be laid on better enforcement of existing laws."

The legislative program in Pennsylvania was then discussed by MR. PAUL N. FURMAN, Secretary of the Pennsylvania Child Labor Association. He stated that Pennsylvania fully expected to pass a good child labor law, possibly two, this year because the

new Governor, Dr. M. G. Brumbaugh, formerly Superintendent of Schools in Philadelphia, had pledged himself to support such legislation, and Dr. John Price Jackson, the Commissioner of Labor, was not only enforcing the present law in a way satisfactory to both manufacturers and Child Labor Association, but was in full sympathy with the Association's legislative program.

"As to what we propose in the way of legislation," said Mr. Furman, "it is little different from what has been proposed before and is done in other states. We are going to introduce two bills: a child labor law and a certificate law. The latter will provide for a proper employment certificate to be returned by the manufacturer in case the child leaves the job. We are going to put that with a physical test and an educational test in a separate bill. A great deal of stress is being laid in Pennsylvania on the physical examination of children. We have had since 1909 a law which requires children to be physically examined before they enter industry. Up to the present time 3,000 children have been examined and all of these were examined in June, July and August last year at the expense of the Pennsylvania Child Labor Association. We now have the full cooperation of Dr. Jackson, Chief of the Division of Hygiene of the Department of Labor and Industry, and whether we get a new child labor law or not, we expect every child under 16 who enters industry will have to undergo a physical examination. The manufacturers are as keen for physical examination as we are, their point being that if a child passes the examination it can be employed the customary number of hours. We are going to ask for the sixth grade for the educational requirement.

"As to the child labor law itself, we shall ask for the 8-hour day for children under 16 and that no boy be permitted to work at night. They work in the glass industry at the present time and in the messenger service. We shall ask that no boy under 21 work as a messenger at night, and we are going to ask for regulation of street trades. The courts have ruled that when a boy buys newspapers and goes to sell them he is a merchant; he is a competitor of Mr. Wanamaker. We are going to get away from that ruling and ask that no boy under 14 be permitted to work at a street trade.

"We feel that our whole program will have not only the backing of the Department of Labor and Industry, but of the new Governor. And we have a majority of the House of Representatives pledged

to two specific things: to give us the 8-hour day and to abolish night work. We have a working nucleus of 21 of the 50 members of the Senate pledged to give us the same thing. With what pressure the Governor will bring to bear I am sure that Pennsylvania will have a better child labor law after this year than it has had up to the present time."*

MISS ANNA ROCHESTER, Publication Secretary of the Committee, presented a report on her work. "It is very encouraging to hear about such an official as Dr. Jackson. We have corresponded with two officials who do not stand in the same class with him. One of our members informed us that the commissioner of labor in a state with an 8-hour day for children under 16 had written him that his state had no such law. We wrote to the commissioner and received the same statement that he had made to our member. We wrote again asking when the law had been repealed. Again he replied that there was no such law. We wrote a third time and then received an apology in which he said that he thought we had asked about the '8-hour minimum wage law for women.'

"On another occasion we received a letter from a superintendent of schools who said, 'I am curious to learn what connection you can possibly establish between child labor and the public schools. A full statement of your views on this will be appreciated.' We wrote him and in reply he said that he found our labored logic interesting, that we no doubt understood the situation in his state better than he and would perhaps be willing to suggest some other reforms that ought to be instituted. We concluded that his interest was not as sincere as it might be.

"But I am supposed to tell you how we are trying to reach the public through the newspapers and publications and what success we are having. There was a time when people did not know anything about child labor and in those days child labor facts passed as news. Now the newspapers have published so much material descriptive of conditions that our press stories have news value only when something definite has happened. But enough things do happen in the way of legislative changes or important inves-

* A child labor bill prohibiting all night work under 16, limiting work day to 9 hours, requiring attendance at part-time continuation school, setting 12-year limit for newsboys and 18-year limit for night messengers has passed the Pennsylvania Legislature.

tigations to enable us to reach the newspapers with genuine news at least once a month and sometimes oftener. Last year we sent out 260 stories to newspaper lists of varying sizes.

"We had a letter the other day protesting that our money was too largely spent on publications. It may interest our members to know that out of every two dollar membership fee we spend about fifty cents in giving our members knowledge of the child labor situation in order that we may build up specialized centers of information among them."

DR. EDWARD N. CLOPPER, the Committee's Secretary for the Northern States, spoke of the numbers of children employed in the United States. "The new census report (1910) shows that there has been an increase in the total number of children employed in gainful occupations, since the number is now approximately two million. This increase, however, has been confined to agricultural occupations. Child labor in non-agricultural occupations shows a reduction of nearly 100,000, as compared with the corresponding number in the 1900 census, which can fairly be considered the result of the agitation carried on during the last decade by this committee and similar organizations. Some child-employing industries, however, are not adequately covered by the census since it is taken in April when the canneries and other summer and fall industries are not in operation. It tells us, for instance, that there was a grand total of 49 children 10–15 years of age employed in all the canneries of the United States, and that 18 children between the same ages were employed on the cranberry bogs. But in spite of these defects it does represent the number of children employed in the month of April, 1910.

"The enormous number of children employed in agriculture and the nature of much of the work make imperative an inquiry into such occupations. I have seen children work in truck gardens near our large cities, stooping over the hotbeds from sunrise to sunset to supply the market with fresh vegetables throughout the winter. They are deprived of every opportunity for education and some of them are almost crippled from constant stooping. 259,000 of these children from 10 to 15 in agricultural occupations are employed by persons other than their own parents, which goes to prove that children can be exploited in agriculture as well as in factory work and should have similar protection."

The following RESOLUTION was read by MR. LOVEJOY and adopted:

"WHEREAS, The Legislature of the State of Texas will meet in session at Austin, Texas, on Tuesday, January 12, A.D. 1915, and we understand that it will have under consideration the passage of laws affecting Child Labor of that State; and

"WHEREAS, A bill which conforms with the Uniform Child Labor Law will be introduced by Hon. Charles O. Laney and other members of that honorable body; therefore be it

"RESOLVED, By the Eleventh Annual Conference on Child Labor, that we send Greetings to the Legislature of the State of Texas, and earnestly urge each and every member of both the Senate and House of Representatives to advocate and vote for this bill when it is introduced; and be it further

"RESOLVED, That a copy of these resolutions be spread upon the minutes of this Conference, and copies be sent to both the Secretary of the Senate and the Chief Clerk of the House of Representatives of the State of Texas."*

A report from MRS. W. L. MURDOCH on the child labor situation in Alabama was read by Mr. Lovejoy.

"Early in the fall an investigation was made by the National Child Labor Committee of the conditions actually existing in the industries where children were employed. From the first it appeared that the number of children to be found in any one employment was not large and that the number under 14 was not nearly so large as we had supposed. Economic necessity was found to play a very small part, and children's wages were small and hours long. With these facts in hand, together with the vigorous educational campaign which is being carried on with the help of the newspapers, we hope to come to the annual meeting in 1916 and report that Alabama has come up to standard at last."†

MISS EMILY BISSELL, of Delaware, spoke of the fight in which the Child Labor Commission of that state had become involved through its efforts to supervise the work of the Child Labor Inspector and make it efficient.

A speaker from Connecticut told of the progress in vocational training. "Our vocational schools are filling up. The Hartford system is very fine and our medical inspection is quite modern."

---

* This resolution was unanimously adopted by the Board of Trustees of the National Child Labor Committee on January 26th.

† A law was passed in Alabama establishing a 14-year limit in all occupations except domestic service and agriculture to go into effect in September, 1916; a 16-year limit for dangerous occupations; an 18-year limit for night messengers; a 12-year limit for boys, 18 for girls in street trades; employment certificates; and an 11-hour day, 60-hour week for workers under 16 years of age.

DR. ROY K. FLANNAGAN, of Virginia, reported a change in attitude of the newspapers toward labor laws and their enforcement. "Two years ago we could only get an inch of space in the newspapers reporting our efforts to enforce the labor laws but now they give us half a column."

MISS HELEN TODD, of Illinois, told of the kind of work done by the inspector who is a political appointee. "Mrs. Dewey, appointed member of the Massachusetts Board of Labor and Industries by Governor Foss, followed up the work of the inspectors. She went into factories where the schedules were marked O. K. and found girls using hundreds of the so-called kissing spindles which the law required to be removed from every factory. The law also demanded that the live steam with which they keep the threads moist should not come directly out into the room and soak the girls' clothing. Mrs. Dewey found schedule after schedule marked O. K. when the women stood in saturated clothing with this steam pouring on them."

Second Session: Immediate Needs in Child Labor Reform

Dr. George M. Kober, Chairman of the District of Columbia Child Labor Committee, Presiding

---

DR. KOBER in a brief introductory address reviewed the history of child labor legislation in England and urged the need of higher standards of child protection in this country. "Some form of protection has been enacted in nearly every state and territory, but many of these laws are far from satisfactory. When we remember that the average boy or girl at the age of fourteen possesses about one-half of the muscular strength of the average adult; and, further, that nearly one-half of the deaths from tuberculosis in the United States last year were contributed by our industrial workers who constitute only one-third the population, we may well question whether we have done all that is just and proper for the physical welfare, the well-being, and education of young workers."

MRS. FLORENCE KELLEY then spoke on child labor and illiteracy.

CHILD LABOR AND ILLITERACY

MRS. FLORENCE KELLEY
General Secretary, National Consumers' League

I am obliged to confess that I know nothing about the present interrelation of child labor and illiteracy, and I am certain nobody in this audience knows much. I should be even more ashamed of my ignorance if I had not for thirty years tried to enlighten it. The trouble is that we do not get the facts concerning illiteracy in a form or at a time when they can serve us. Stale facts are perhaps as poisonous to the mind as stale food to the body.

The census figures of 1900 in regard to illiteracy and child labor became available in 1907. The corresponding figures from the census of 1910 became available after the middle of 1914, about two and a half years more promptly than those of the earlier census. Calculating progress at this rate, when shall we get census figures while they are still valuable?

The figures from the Census of 1900 dealing with children 10 to 14 years of age were seven years old when they reached us. Children just short of 14 when the census was taken were by that

time in the neighborhood of 20. In many parts of the country young people marry early, and some of these children were doubtless already heads of families when the federal census contributed its data to justify us in legislating for their protection!

The present situation is a little less preposterous than that. But although there is a little gain in time, a loss more than offsets it. The figures of the Census of 1910 are not comparable with those of 1900 for our purposes. We could show in 1907 that, in 1900, there had been a certain perceptible relation: the largest numbers of children at work were in the thirteen states which returned the largest number of child illiterates, both as to percentages and as to total numbers. Alabama was at the bottom of the list. Mississippi came next. The other states rose in the scale to Wyoming with only 72 children at work and no illiterates according to the Census of 1900. Such comparisons are now impossible. Later volumes may make them possible, and I hope we may never allow this stupid blurring of significant facts to happen again.

We must know currently the real extent of child-illiteracy and the distribution of illiteracy and child labor. This virtually is the beginning of 1915. Five years must pass before the figures will be gathered again, and probably three years more before they are made available. I propose therefore that we ask the federal Bureau of Education to make an immediate study of the available figures of the census, published and unpublished, showing in popular form —available not only to expert statisticians but to anyone who can read English—where the children are who make up our disgraceful total of illiterates between the ages of 10 and 16 years.

We know that we have many young native white illiterates in the rural districts, not where the immigrants come out of the steerage. The young foreign-born children are largely in city schools; in New York we cannot build schools fast enough to hold them. But in rural districts in the Catskills and the Adirondacks there have always been native white illiterate boys and girls. This is not a recent discovery; it is a continuing phenomenon.

Mr. Clopper pointed out this morning that the census shows a large total of laboring children because it includes the agriculturalists. I suspect that the apparent increase is not in actual workers but simply in children counted. I feel certain that current federal information as to illiterate children in the rural states

would reveal the same thing that exists in the Adirondacks and Catskills.

When children are congested in cities, they behave so badly that schools have to be built to keep them in at least a part of the day. When children are in the country, not being run over, or setting fire to houses, we tend to leave them to their own devices. They are inoffensively occupied and it is tempting—because inexpensive—to leave them illiterate. I submit the following resolution:

> WHEREAS, One excellent remedy for illiteracy is to keep children in school; and
>
> WHEREAS, This remedy can be applied only where schools and teachers are available; and
>
> WHEREAS, It is at present impossible for the American people to learn through any government agency where and in what degree illiteracy now exists among children ten to sixteen years of age; therefore be it
>
> RESOLVED, That we ask the federal Department of Education to publish quarterly bulletins setting forth
>
> 1. Where illiterate children are shown by the 1910 census to have been found, and
> 2. What steps have been taken by federal, state or local authorities, since 1910, to provide schools and teachers in regions of greatest child-illiteracy, and
> 3. Current facts as to the building of schools, and increase in teachers, and in expenditures for such purposes in the regions of conspicuous child-illiteracy;
>
> And to facilitate the publication of this information at quarterly intervals, while it is current and therefore valuable, we pledge ourselves to cooperate with the federal Bureau of Education in obtaining whatever appropriations may be necessary for this purpose.

MR. H. H. WHEATON, Counsel for Committee for Immigrants in America, made a short address on the immigrant child and child labor in which he made a practical suggestion as to the following up of immigrant children by the educational authorities in cooperation with the immigration officials at the port of entry. Mrs. Kelley pointed out that Mr. Wheaton's suggestion would extend a system which is in actual operation in New York State.

DR. PRICE, Medical Officer of Pennsylvania State Industrial Board, described the physical examination of children applying for work permits in Philadelphia which had been carried on for three months last year in cooperation with the Pennsylvania Child Labor Association and the Philadelphia school authorities. He referred to the large numbers of children 14 years of age and over who were not physically fit for employment and emphasised the need of including a requirement for physical examination in the employment certificate law.

MISS ANNA HERKNER, Assistant Chief of the Maryland Bureau of Statistics and Information, delivered the following address on cooperation between national, state, and local authorities.

COOPERATIVE ADMINISTRATION OF CHILD LABOR LAWS

ANNA HERKNER
Assistant Chief, Maryland Bureau of Statics and Information

With no desire to minimise the difficulty we still experience in most parts of our country in endeavoring to place comprehensive child labor laws on the statute books, I want to express my conviction that the great task immediately before us is that of securing effective administration. A new and rapidly growing country, we have been intent on legislating and have neglected to apply our inventive genius to the machinery of administration.

There is no direct and easy road by which the efficient administration of public affairs can be secured. The responsibility can not be shifted entirely to a few paid officials. The people must take an active interest in the conduct of their affairs, and they must so simplify the machinery of government that they, and not a small political organization, shall control the servants entrusted with the carrying out of the people's wishes as expressed in their statutes.

Social legislation is a phrase that has come to roll off our tongues very easily, but the public official who honestly attempts to enforce with an adequate staff of fairly efficient inspectors the definite piece of social legislation known as the child labor law discovers a new meaning to this phrase. He finds that it means legislation that can not be properly enforced until practically all society is actually convinced of its justice. At the present time the inspector who would carry out all the provisions of the law would either be put out of office very soon or furnish arguments to the opposition for the repeal or modification of the law.

We as a people believe theoretically in education, in recreation and physical development, and in the value of a prolonged and happy childhood. But in reality the person who believes that the protection of a child labor law should be extended to all children of a given age without regard to poverty, orphanage, mental retardation and other handicaps is rare indeed. It is not exceptional to find the friends of a child labor law asking for exemptions in administration. Agents of organized chairity, who more than anybody else should know how largely child labor contributes to

poverty, have been known, because for the time being the child's earnings would solve the family's financial difficulties, to urge an employment certificate for a child who did not measure up fully to the legal requirements. Teachers upon occasion, because the child happens to be a difficult pupil, recommend that an employment certificate be issued to a child who has not completed the educational requirement. Ministers frequently take time to intercede for employment certificates for unqualified applicants because their parents are honest and capable. Physicians are only too numerous who will give the puniest child a certificate of normal development and good health in order to retain the family's favor or to earn a paltry 25 cents. Nor are the lawyers scarce who will take their valuable time to devise means of forcing the issuance of an employment certificate to an unqualified applicant. Landlords who take a kindly interest in their tenants appeal for certificates for children to whom the law would deny them. Business men who are not generally employers of children personally ask exemption for certain children whom they would employ only as a charity. If these professional people who represent the most enlightened opinion of a community establish with the best of intentions a precedent of exceptions which tends to the ultimate nullification of the law, how much should we expect in proportion from the poorly paid inspector?

There are two large groups from which opposition to the administration of the law is naturally expected, the parents of the children and the employers. This opposition is for the most part exaggerated, but where it does exist it is generally due to ignorance of the real arguments for restriction and can be dispelled by reasonable explanation. In fact a reasonable explanation is all that the doctors, lawyers, social workers and others who ask exemptions need. They must be brought to look upon the restriction of child labor from the point of view, not only of the particular child, but primarily from the point of view of justice to all childhood. But a dozen state officials charged with the responsibility of some 15,000 children have little time for carrying on an educational campaign. In a small department with no organized publicity division the desired education of the community must be secured indirectly and the process must maintain itself automatically through the regular activity of the department. This is possible by developing a very intensive

cooperation with as many agencies and interests in the community as possible.

The school system is the largest of these agencies and is of prime importance. Neither the child labor inspectors nor the schools can discharge their responsibility to the best advantage of the child unless each is entirely familiar with the work of the other. The school will continue to be deserted for the factory at the earliest opportunity until the factory inspector discovers the attraction of the factory and forces it upon the school for serious consideration. In merely carrying out the laws governing school attendance and work, inspector and school need each other. In Baltimore we report to the School Attendance Department all applicants who have been refused employment certificates in order that they may be returned to school, and we report to the principals the names of all the children who have secured employment certificates. A monthly report is made to the Superintendent of Schools of the total children who were licensed to work, classifying them by age, color, sex, grade completed, school, and reason for going to work. Certificates which remain in our files over one month after they have been sent in by a previous employer are reported to the School Attendance Department. In this way children who were disappointed in industry are brought back into school, and the idea is spread abroad that unless a child under 16 is legally employed his place is in school.

The endeavor to establish a child's age brings us in contact with the church and the medical profession. By developing every point of contact with every social agency and by devising new ones, it is possible to carry on a quiet but most effective campaign of education to the principles underlying child labor legislation simultaneously with the careful administration of the law. Even the man of whom we generally most despair, the ward politician, readily responds when the real argument for the protection of the child is put to him. He is near the working masses and can understand that if 10 per cent of the labor force consists of children, their competition may have a perceptible influence on the wages of adults. I have yet to find the petty politician interested personally in his constituents who can not by honest, forceful argument be sent away an enthusiastic convert to the most careful regulation of child labor. It is the political boss, whose services have been

enlisted by a reactionary business interest, and who exercises his power over a legislature without any particular case in mind upon the merits of which he can be convinced, and without imagination or mental ability to comprehend the fundamental principles, who is the formidable political enemy of the working child.

The policeman, who is more numerous than any other official in our cities, can likewise be enlisted in the cause. He is not easy to approach directly, but his actions are greatly influenced by the mental calibre and moral strength of a handful of commissioners. The inspector, by requiring their assistance in the regulation of newsboys and street traders and in forcing prompt entrance in establishments where entrance is denied and violations suspected, can enlist a most valuable interest. The policeman is near enough to the people to reckon the tremendous social cost of child labor if his attention is directed to it, and because the interests of his limited beat tend to grow monotonous he is especially open to new ideas or at least new light on old ideas. In his private life he is a man of the people and what he brings back to them from his experience and observation as a policeman carries strong conviction through a large radius.

Thus I might go on multiplying the groups with which the child labor inspector can and should cooperate to the end that his responsibilities may be fully discharged. But if he is to be relieved of the pressure that is now brought upon him to make exceptions, he must be protected by a check on his work from an authority beyond the reach of local influences. We have found in Maryland that the county school authorities who issue the employment certificates in their communities are very glad to be held to a careful discharge of their duties by a thorough inspection at the hands of a state official. Unless they can argue with conviction that any irregularity on their part would inevitably be checked up by the state inspector, they are frequently so placed that they can not escape the pressure of local friendship and other close relationships. A state department finds itself in need of similar support from some higher authority, or from one that is at least beyond the control of petty local influences.

This support is needed because of the unpreparedness of our courts and magistrates as well as because of the power of mediaeval industry that still hopes for big returns from other than efficient workers. The chief difficulty lies in the fact that neither the courts

nor the public have yet learned to think of justice as based on human rights. Even the revered occupant of the bench with his supposedly judicial mind does not always see clearly that the violation of the law which does not result promptly in physical injury or destruction of property may be a serious offense because of its infringement on human rights. His slowly adjusting conception of things makes it difficult for him to realise that the refinements of our civilisation have extended likewise to the offenses against civilised society. The magistrate still presides who says openly when a violation has been conclusively proven, "You have proven your case, of course, but what would you have me do? Certainly you would not expect me to impose a fine when no damage has been done. Now if it were a case of blackening a man's eye, the injury would be clear, but obviously there has been no injury here." Nor even in our modern juvenile courts have we proceeded very far when a judge, on being asked for his cooperation in enforcing the child labor law, asks most innocently, "Is it really necessary that all the provisions of the law be enforced?"

In view of this attitude, it is evident that the state inspector must be shielded in order that he may fearlessly enforce the law to the best of his understanding and ability. This aid, which would so easily and promptly secure to all the working children of the state the protection intended by the state law, could be given by some federal authority with a minimum of machinery. In most instances it would be a sufficient deterrent to have it known that violations of a state child labor law must be reported to a federal authority which would deal with them through a higher tribunal. But better still would be a law that would make the offense carry its own penalty by debarring from interstate commerce goods produced in violation of the state's laws.

The people of this nation can not justify their indignation at the extent and conditions of child labor until they are themselves ready persistently to refuse to share in the products of the exploitation of children in industry and commerce. Their denunciation of the few public officials to whom they entrust the regulation of child labor for failure to eliminate this evil or at least make it palatable is not much better than hypocrisy so long as they do not consistently demand of those officials the careful discharge of their duties and provide the necessary aids to that end.

DISCUSSION

MISS MADGE NAVE, one of the state factory inspectors of Kentucky, was asked to report on the working of the new child labor law passed a year ago in that state. She said in part: "A few people who had been interested in the passage of the law gave their services to help with the enforcement, and practically no violations have been found. It was feared that the law might work hardship on some families, and one of these volunteer workers drove about day after day visiting the homes of families and helping the children, who had been discharged from factories because of the 8-hour day, to find new jobs. Very few if any children have suffered as a result of the law. Incidentally whole families have been helped by the work of these investigators, and some children have been put into vocational schools. There was no difficulty in taking children under 14 out of the picture shows, which had grown almost to an industry in Louisville. Gus Edwards had three children in his troupe when he came to a Louisville vaudeville theatre for a week. I am ashamed to say I did not know of it until the week was half gone but then we got those three children off the stage for the rest of the week, in spite of trouble over it with a big politician who had in a way helped with the passage of the law. The only other child who has come to town was kept off the stage during a six weeks' engagement. Then as to street trades: some of our volunteer helpers undertook to visit the home of every child in Louisville who had been selling papers under 14. Out of seventeen cases only two were in need, and these the Federated Charities helped immediately. There was no difficulty with the newspapers. They felt that the law was there and had to be enforced, and that it would do them very little good to oppose it. But the youngsters themselves have an ingenuity that amounts to genius in evading inspectors and people who are interested in enforcing the law. Only people who have taught boys under 14 can have any conception of what dealing with the street trade problem means."

The RESOLUTIONS which had been offered by MRS. KELLEY were adopted without discussion, for reference to the Board of Trustees of the National Child Labor Committee.*

The meeting was then thrown open for general discussion.

DR. S. ADOLPHUS KNOPF spoke of the physical effects of child labor:

"If we had no child labor we should have very much less tuberculosis; we should have very much less alocholism, and fewer diseases of the mind and of the nervous system."

MRS. MARTHA P. FALCONER, Superintendent of the Girls' Department of the Glen Mills Schools, urged the importance of carrying the campaigns for better education into rural communities. "We must keep these (country) children in school and fit them to earn a decent honest living. We must make it more worth while for boys and girls to stay in rural communities, by making the school work interpret life as they are to lead it in those communities."

* They were unanimously adopted by the Board of Trustees, January 26, 1915.

DR. GROSSMAN referred to the "great danger that comes to the child from being put to work during the period of immaturity." He said that children should be mentally as well as physically mature before being allowed to enter industry. Other speakers brought out the need of work based on educational principles.

HON. FRANK A. WHITE, Chief of Maryland Bureau of Statistics and Information, spoke of the enforcement of the stage law in that state, and the need for doing away with the discretionary permit power now vested in the Bureau.

Third Session: The Federal Child Labor Bill

Dr. Felix Adler, Chairman of the National Child Labor Committee, Presiding

---

The Chairman introduced HON. A. MITCHELL PALMER as the first speaker of the evening.

In speaking on the constitutionality of a federal child labor law Mr. Palmer said: "The language of the Constitution which makes this bill entirely constitutional is contained in about twenty words: 'Congress shall have power to regulate commerce with foreign nations, among the several states, and with the Indian tribes.' That is a perfectly plain proposition and yet lawyers have haggled over it for one hundred and twenty-five years. It took the Supreme Court two generations to decide that each of these powers was equal to the others. And then it took another long line of decisions to get it settled that the right to regulate included the right to prohibit. And after that it had to be decided that the right to prohibit meant the right to prohibit certain articles, such as the importation of whiskey into the Indian lands. I have always had a lurking suspicion we could convince the Court that the children of America were just about as important to the people of America as the sobriety of the red-skins.

"I am satisfied that when this federal child labor law goes to the Supreme Court, as it must some day, because these exploiters of child labor will move heaven and earth to prevent such a law from being put into operation, the Court will say that if the method of production be such as to create an atmosphere around the factory and mill which will stunt the growth of the little children employed, the prohibition of that article in interstate commerce is entirely within the rights and powers of the American Congress."

Mr. Palmer was followed by MISS LILLIAN D. WALD, of New York, who spoke on child labor and the Children's Bureau. "The greatest work of the Bureau," said Miss Wald during her address, "will be to create ideal standards for states and municipalities and to stimulate to action where no initiative has been taken. Legis-

lators in the different states are already influenced by the authoritative word of the federal Children's Bureau."

The next speaker was MR. HENRY P. KENDALL, of Massachusetts, whose topic was the effect of uniform child labor standards on interstate competition.

THE EFFECT OF UNIFORM LABOR STANDARDS ON INTERSTATE COMPETITION

HENRY P. KENDALL
Plimpton Press, Norwood, Mass.

This subject discussed at a conference on child labor must be interpreted to read "The Effect of Uniform Child Labor Standards on Interstate Competition." Since we do not now have uniform standards in the states controlling child labor, we must formulate them for the future from the study of past and present data. Because I am to deal in futures, so to speak, I wish to base this discussion on facts limited to a single industry which I believe fairly representative of the principles involved.

According to the census report of 1910, the numbers of children at work in factories and mines and other occupations were

Between the ages of 10 and 13.....	895,976
Between the ages of 14 and 15.....	1,094,249
Or a total of.....	1,990,225

nearly two million children under 16 years of age. As this census was taken in the brief period of April, many of the seasonal occupations, such as cranberry picking, canning, etc., were unaccounted for, so the total during the year of 1910 must have been well over two million. The textile industry employed by far the largest number of children:

Between the ages of 10 and 13.....	14,642
Between the ages of 14 and 15.....	65,888
Or a total of.....	80,530

I wish further to limit consideration of those employed in general textiles to those in cotton manufacturing, and I do so for three reasons: (1) The cotton textile industry is found both in a group of states having fairly good child labor laws, and in a group of states having very poor child labor laws, or substantially none at all. (2) The textile industries are not seasonal but continuous. (3) And from experience as managing director of two unrelated textile finishing plants I am more conversant in that field than in almost any other.

I wish to make it clear, also, that I am limiting my discussion to the *immediate economic business* aspects of industry, and must not be understood to be contending that it is wise for children to work in mines and factories at all.

The opposition to child labor legislation in the states in which it has not progressed very far comes primarily from two groups of people. First, the parents of children below the proposed age limits who are now at work, or likely to go to work. It may be the greed, ignorance, or the real need of such parents who oppose any restriction of what they believe to be their rights. So far as this group affects the economic question of competition, its opposition can not be considered in this paper.

The second class is represented by mill managers, owners, and associated interests and others. Their public opposition seems to come under one of the following four heads:

I. They oppose child labor legislation when they feel it is drafted without a thorough investigation of all the facts. While they may agree that the aim is laudable, they feel that the means are defective and try to kill a proposed bill in the hope that a better one may be drafted.

II. Because cotton mills were the first large industries to be developed in the agricultural communities of the South, they did not find an existing industrial labor market. It was necessary to teach an untrained very largely agricultural population. Children learned more quickly than adults and it was cheaper to teach them. It is argued that there will be insufficient skilled help to draw on now if the elimination of child labor is brought about.

III. It is contended, probably sincerely, that the elimination of child labor will work a hardship on widows and orphans who have no other means of support; hence the conclusion that mill work is a necessity and a blessing for such as are in real need.

IV. It is asserted by many mill owners that they cannot compete with mills in other states, and they do fear lessened profits, and possibly in some instances inability to compete at all.

This fourth argument is the one on which this discussion chiefly hinges, but to make it as complete as possible, I will briefly take up the opposition under the first three heads.

I. The child labor laws as proposed from time to time have been or are badly drawn.

This is a criticism which is true not only of many child labor bills but of much of the social legislation which has been advocated or actually passed. To-day the amount of hurried, badly drawn social legislation which is on the books of the various states fails to secure what was intended, or cannot be properly enforced. Someone has said that nearly all labor legislation is a hybrid production of timid politicians and foolish philanthropists. There are many influences at work which make every condition complex. Many would-be reformers do not investigate all sides, and jump at conclusions which are oftentimes wrong. An intelligent discussion of child labor, or any other labor legislation, before a bill is drawn, should embrace a careful study of the industries of the community, the conditions under which children work, the hours in which the machinery runs; and a discrimination should be made between work which requires constant machine attendance and the class of work which is intermittent and allows periods of rest throughout the day. Just as every child is different, so are occupations different. What will fit one child under this environment will not be suitable to the same child under another environment, nor does every child pass from the period of childhood at the same age. The conditions of the homes, of the schools, might, if one child were studied, call for a totally different treatment with respect to industry than in the case of another. Hence too great care cannot be given in generalising on child labor any more than on other forms of social legislation. In mills which formerly ran 54 hours a week, made up of six days of 9 hours each, or in mills which ran 48 hours a week, or 8 hours for six days a week, it is generally considered better for the employees (and they like it better themselves), if the running hours be changed to five and a half days a week, giving a full Saturday afternoon holiday. So I believe we should think more of the 48 and 54-hour week and of working conditions than of the 8 or 9-hour

day. Hence, to prohibit a woman or child working more than 8 or 9 hours a day in any one day, when the machinery customarily runs more than that number of hours for five days and less on Saturday, may mean a direct hardship to women and children and to the industry without gaining a single point. I believe that manufacturers and employers generally are as likely to favor real reform as any other citizens in the community, but the time has come when these men should not blindly oppose the principles of reform legislation, like minimum wage, workmen's compensation, child labor, etc., but should accept the general principles and feel the responsibility of counselling with those who prepare and those who enforce such laws. A necessary aid to this end is the legislative drafting bureau, such as exists already in some states. (Note the admirable work done by Mr. Parkinson, head of the Legislative Drafting Bureau of Columbia University.) The increasing recognition of this need is evidenced by the way the Wisconsin Industrial Commission has worked out standards for health and safety in the industries of that state. (I sent to them myself, not many weeks ago, for their standards on factory illumination.) The American Association of Labor Legislation has pointed out that the biggest breakdown in legislation of this kind has been the inadequate machinery for enforcing it.

Cooperate to have your bills wisely drawn; cooperate to have them efficiently administered. The good citizen, whether he be manufacturer, professional man, or laborer, has the same responsibility.

II. The second point of opposition declares that child labor is still necessary, particularly in the southern states where a skilled labor market has not yet been sufficiently developed.

We cannot fail to see the reason for opposition on this point so long as this condition faces a mill manager, but that argument has less weight than it had five years ago, or even one year ago. The country to-day is, if anything, over-equipped in the textile industry. In the South especially, from which opposition comes on this point, there has been a gradually lessened annual increase in cotton manufacturing equipment, and it ought to be only a short time before labor will be trained as rapidly as it is required. This does not seem to me to be a sufficient argument alone, on which to withhold uniform child labor legislation.

III. That the limiting of child labor will work a hardship on widows and orphans who depend on the mills for support.

It was found by an investigation of a number of hundred children below the age of 14 years in certain cotton mills, that the earnings of less than fifteen per cent of them were actually needed in the family. In a representative South Carolina cotton mill

Doffers of 12 years were paid $3.54 per week
Doffers of 13 years were paid $3.92 per week
Doffers of 14 years were paid $5.04 per week
Doffers of 15 years were paid $4.75 per week

These are high wages for children, but not a very heavy burden for society at large to bear, knowing that the dependent and the unfortunate, as well as the poor, form a burden which society must bear. Those who conclude that the only way of meeting this question is to let the child work in a mill, would be like the biologist who examined a single microtome cross-section and on that single observation drew a general conclusion. Society at large, if the cotton mill is not the best place for the dependent child, should look that fact squarely in the face, and provide other methods. Widows' pensions, and state aid for the support of families, so the children may be kept together in the home with the mother rather than supported in different state institutions, are recognized as some of the far more modern ways of treating such conditions. Society at large is beginning to recognise that conditions of unemployment, seasonal occupations, poverty, and pauperism are conditions which are wholly unnecessary, are unnatural, and can be regulated and cured absolutely. Society will gradually awaken to its full responsibility and discover the best way of doing it. Hence, assuming that to-day fifteen per cent of the children employed in the textile mills need their earnings which average perhaps three dollars a week, and assuming that this percentage applied throughout all child industry, there would not be a grievous expense for society to bear, even unorganized as it is now for such work.

IV. Child labor legislation is opposed by textile employers and associated interests, because they fear lessened profits and assert inability to compete.

A part of this argument would disappear under a wise federal act. At present any opposition in a southern state is strengthened by the fact that, should restrictive legislation be passed in that particular state, it would handicap it at once in its competition with the other states without such restrictive legislation. This is true. A uniform federal act would immediately affect the competition of a state which now has no child labor act with those which are at present operating under such, and it narrows the question down to the issue: Will a uniform child labor act prevent the reasonable competition of southern states which now have no such act with the northern states which have been operating for some time under such acts?

My contention is that the restriction of children under 14 years of age, or whatever standard the uniform child labor legislation adopts, will not prevent the states at present operating without such acts from profitable competition with states which are at present under such, and I shall advance three assertions:

1. The textile centers of the South are so situated with reference to the centers of distribution that they are not handicapped by transportation charges. Look at a railroad map of the United States and you will see that the southern textile states, North Carolina, South Carolina, Georgia, Alabama, etc., are nearer to the center of population, which is not far west of Indianapolis, than are the New England States, and have distinctly in their favor lower transportation costs from the cotton fields to consumers, than the New England States.

2. The southern states have a differential in their favor in lower basic wage costs for adult labor, and they operate more hours per week. These differentials fully make up for a lower grade of skill or efficiency of southern labor, if there really be such. Here I make use of figures taken from the U. S. Bureau of Labor Statistics for the year 1913, to indicate as fairly as possible the differential in wage rates. It has been well said that statistics is fiction in its most uninteresting form, but from my own knowledge of conditions I feel that in this case the figures are reasonably accurate and fair. I have taken them from the average state, neither the high nor the low, which at the present time has restrictive child labor legislation, and from the average state which has no such restrictive legislation. (And as you observe nearly all these operations are performed by adult labor.)

BULLETIN OF U. S. BUREAU OF LABOR STATISTICS FOR 1913, NUMBER 150

Pages 45–53 and 73–75

	Without Child Labor Laws		With Child Labor Laws	
	Average wage per hour	Average wage per week	Average wage per hour	Average wage per week
Card Strippers (Male)	.1145	6.92	.1460	8.10
Drawing Tenders (Male)	.0955	5.75	.1258	7.10
Fine Speeders (Female)	.1265	7.53	.1542	8.80
Loom Fixers (Male)	.1762	10.64	.2521	14.30
Slashers (Male)	.1445	8.70	.2421	13.76
Spinners, Frame (Male)	.1099	6.60	.1524	8.53
Trimmers and Inspectors (Female)	.0957	5.79	.1273	6.64
Weavers (Male)	.1446	8.72	.1907	10.84

By this you will see that there is a markedly lower rate of wages paid adult labor both by the hour and by the week in the southern mills. The average time of operation for the southern mills was in 1913 an average of about 60 hours or over, or about eight per cent more than northern mills which operate from 54 to 60 hours per week. These differences in the hour rate and in operating time would seem to offset the southern undeveloped labor market and the average individual inefficiency of the southern worker, whatever they may be at the present time. I have talked with men who have operated mills in the North and in the South, who emphatically asserted that child labor under 14 years was uneconomical on account of the increased accidents, greater damage to machinery and the extra cost of supervision. Some go so far as to say that no labor under 15 or 16 is economical labor, that the only advantage lies in training boys and girls at that age, because they learn more easily and acquire greater dexterity than at a later age. They claim that the best spinners, for instance, are those under 25 years. Similar conclusions were drawn by Howell Cheney in an admirable paper presented before you some few years ago. I feel that the intel-

lectually honest mill manager would not oppose the elimination of children under 14 or the regulation of those over that, if the bills did not usually by prohibition, set hours per day which would not coincide with the customs of the machine operation, and make conditions that seemed, if they were enforced, to make impossible all juvenile labor. Every mill manager and every thoughtful layman realises the difficulty of different classes of employees working at different hours in attendance on the same group of machines.

3. Under equally good management and equally good equipment, a southern mill can compete successfully with any northern mill; and under equally good management with the above differentials in their favor should be able to compete more successfully than northern mills, and that without the use of child labor.

As I have observed the textile industry, which is a very old industry, I have felt that it was controlled, perhaps more than almost any other, by its traditions. The form of organization, the methods of administration, of training and directing the workers, are much the same as they have been for twenty years or fifty years. Other industries, influenced perhaps by revolutionary methods of management, have made great strides in management. There have been great improvements and refinements in textile machinery, in automatic looms, warp stop-motions, and in the lighting and ventilation of buildings, etc., and in working conditions generally, but it seems to me that mill management still has great opportunities for improvement. It is my firm conviction that if the same attention were given to cotton mill management that has been given to efficient management in some other industries, the managers themselves would be surprised at the results they could obtain, and obtain with their present employees. I know there is great opportunity and reward in that kind of work and, to my knowledge, not more than one or two cotton mills have radically departed from the traditional methods of management, and are now working under newer methods. The broad science and art of management is still little understood.

When we see from statistics published in the U. S. Government Report on Woman and Child Wage-Earners in the United States in 1913, that illiteracy and delinquency among children show a much larger percentage among the workers than nonworkers; that the boy who goes to work in a cotton mill has just one-half the chance to live until he is twenty that the boy outside has; that girls suffer

in an even relatively large proportion; when we see that there are more than 40,000 child operatives in cotton mills alone, we can not but be impressed with the need for the cotton mill men to set their own houses in order, and grasp the tremendous *opportunity* they have for a real contribution to society at large and to future generations.

I have confined this discussion and drawn my conclusion from a study of the cotton manufacturing industry. While this employs by far the most children in any single industry, it may be argued that the conditions of work and competition are not exactly analogous to all industries.

But I believe the principles are the same, and I would not qualify my conclusions in their application to any industry. Education and voluntary effort do not seem to be enough to overcome individual inertia, or sufficiently to stimulate society at large. Hence federal help and uniform state action are needed and should be welcomed.

Hon. William S. Kenyon followed Mr. Kendall and spoke on the national conservation of childhood. "It is all right to meet and talk about these things," said Senator Kenyon in closing, "but let us flood Congress with letters and telegrams. Let them know that the people of this country demand that child labor shall be stopped. Congress is going to do what the people want; that's one of the fine things about Congress and the only excuse for its existence. The majority of the people in this country are in favor of a national child labor law, so I urge as a practical end that you get busy with the folks at home and bring pressure to bear upon the members of Congress."

Fourth Session: Child Labor To-Day

Owen R. Lovejoy, General Secretary of the National Child Labor Committee, Presiding

---

The session opened with a general discussion from the floor. MRS. MARTEN, of Connecticut, and MISS LANE, of Brooklyn, N. Y., spoke of the dangers of idleness and the need for some kind of suitable employment outside of school hours. MR. CONANT, of Boston, said: "Many people are raising the question that was first raised as an indictment against child labor laws. They say we have left nothing for the children to do. We in Massachusetts sent a questionnaire to 2,128 children and had them fill it out under their teachers' supervision to find out whether there was much idleness among these children who were no longer allowed to follow regular occupations. Nearly every reply shows the children were busy helping around the house, helping with chores, cleaning, getting wood and getting coal and ice and fruit and potatoes, emptying barrels, getting barrels, and doing a large number of miscellaneous things which kept them busy all the time they were out of school. I should say from what I have observed that children under 14 are able to use leisure pretty profitably, and I think they are given enough to do."

MISS LILLIAN D. WALD, of New York, spoke to the same question: "Mr. Conant's experience in Boston is identical with that of other places. Little girls scrub floors, mind the baby, and do many things quite beyond their strength and their ability. I think we should wade into the mire if we tried to agitate for work for brief periods under 14. The Christmas exemptions are the most tragic evidence of such indiscretion we have ever had."

MISS ANNA HERKNER, of Maryland, brought up the question as to what is to be done with children when they become restless in school and do not want to study. "We know that work of the wage-earning kind is not the solution of that problem, and the oftener the question comes up, the quicker will the schools take hold of it. Children need play and work. The school is the public institution for taking care of both."

It was asked from the floor how many boys there are in this country between 14 and 16 who are out of employment and not attending school. The CHAIRMAN replied that no exact statistics on this point are available. He continued: "The whole discussion points to the fact that there has been a lack of constructive educational opportunity for the child whose life has been affected by restrictive child labor laws. No doubt in certain individual instances hardships have been visited upon a child, but laws must take cognizance of the greatest good to the greatest number. I think if a child of 10 or 12 years gets disgusted with the public school and is not interested there may be something wrong with the child, but probably there is something wrong also with the school. A

curriculum and a system of training could be devised that would interest the child and keep him beneficially occupied."

DR. A. J. MCKELWAY, the Committee's Secretary for the Southern States, delivered an address on child labor and patriotism. He said in part: "We in this country are chiefly concerned to-day, it seems to me, in upholding the standards of civilisation for the rest of the world. For many of the human welfare standards we are indebted to the Old World, but now we feel that in the wrack and ruin of so much that has been painfully builded there these standards will inevitably be let down. And it will be left to America to hold high the beacon light of humanity. I think of the great stream of life in America that has been gathered from various sources of the Old World and is pouring through our borders in ever deepening and widening current as our population increases. And I realise that through the evil effects of the child labor system there is pouring into this stream of life a current that tends to muddy the waters, just as you have seen a clear, wide-flowing river suddenly meet a turbid flood, smaller in volume, which yet spreads out over the whole and makes it no longer the pure and limpid stream that it was. So we who love our country are striving to purify this stream of life at its source; to give to the children, up to the very limit of childhood, the rights of childhood. If this be so, I hold to-day that the traitors to the Republic are those who persist in exploitation of childhood for gain. When a lobby of manufacturers appears before a legislature to resist any improvement in child labor legislation, the thought sometimes occurs to me, 'What will their children think when, in some old file of papers, they come across their names and recognise their fathers or their grandfathers as having arrayed themselves against the sacred rights of childhood?' That any set of men should be putting themselves in the way of the progress of the race by shortening the period of childhood, tempting the parents with wages which are offered to the child for the very support of life, is an indictment which few would care to face at the bar of civilisation."

The Chairman then introduced MR. DAVID CLARK, of Charlotte, N. C., who spoke as follows:

A DEMAND FOR A SQUARE DEAL

DAVID CLARK
Editor, Southern Textile Bulletin

Mr. Chairman, Ladies and Gentlemen:

I come before you to-day to make a plea for a square deal for the cotton manufacturers of the South.

I do not come at the instance of the cotton manufacturers, in fact, up to the time of accepting your invitation no one of them knew

that I contemplated addressing you and even now, only four or five of them are aware I am here.

I am editor and sole owner of the Southern Textile Bulletin, a journal that covers the textile industry of the South, and goes not only to the cotton mill officials but to the superintendents, overseers, and other practical men in the mills.

Prior to entering journalism, I was for eight years in the cotton manufacturing business beginning as an operative, and at one time or another filled practically every position in the cotton mill. For a considerable portion of the time I lived with mill people, ate with them and I therefore know how they work and how they live.

The cotton manufacturers have no financial interest in my publication, either directly or indirectly, and I have never hesitated to take issue with them upon any matter where I consider them to be in the wrong.

I stand very close to the men in the mills, including the operatives, and I have my hand on the pulse of the industry. I know what they are thinking and what they are saying, and I am endeavoring through my journal to aid them, not only in their practical but in their moral development and to put into their minds, thoughts and ideas that will do much towards causing them to live clean and moral lives. Probably my greatest field of endeavor has been to promote good feeling and square dealing between the mill officials and the operatives, and I do not believe that any other industry in this country can to-day boast of as much good feeling, confidence and cooperation between these two classes, as exists in the textile industry of the South.

I have explained to you at length the position which I occupy and the work in which I am engaged, in order that you may know that I have more than a theoretical knowledge of my subject, and I now wish to tell you where I stand upon the subject of child labor. I wish you to remember that I speak from practical knowledge and contact with the subject.

I have never advocated child labor and I have never believed that any child of less than 12 years of age should be allowed to work.

I do not believe that a girl under 14 years of age should be allowed to work, but I have never seen any evidence that a boy above 12 years of age was injured by cotton mill work, except, in so far as it prevented him from attending school, and wherever and

whenever it is possible for a boy under 14 years of age to attend school, I believe that it should be illegal to employ him in a mill during the school term.

I do not believe that any woman under 18 years of age should be employed on night work, and in taking this position I take issue with many of our manufacturers.

This is briefly my position upon the so-called child labor question, but at the same time I wish to say that I can show you strong, healthy men, many of them filling high positions in the mills whose appearance will compare favorably with any of the gentlemen before me, who began work as cotton mill doffer boys at 8 or 9 years of age when there were no age restrictions.

I can show you strong healthy women in the cotton mill villages, mothers of large healthy families who began work as spinners at the early age of 8 or 9 years.

On the other hand, in spite of all the pictures that your organization has printed and all the statements that have been made, I have failed to note where you have shown one man or one woman whose health has been wrecked by early work.

There is a misunderstanding on the part of the public relative to the work that is being performed in the cotton mills by young boys and girls.

I have seen your statements about the "child at the loom," but it is an impossibility for a child to reach from the front of the loom to the place where the broken threads must be tied. Your representatives have seen small children playing around the looms operated by their parents or assisting those parents, but it was a misrepresentation to picture those children as running looms.

The young girls in the mills are employed almost exclusively at the spinning frames where it is their duty to watch the threads that break and "piece-up" or replace them. When there are no broken threads they sit on the boxes at the ends of the frames and make occasional trips down the alleys. Their work is not continuous and requires very little physical energy. It cannot be compared to the endless, unceasing strain upon a girl at a sewing machine in one of your New York sweat shops.

When the bobbins on the spinning frames become full the young boys remove them from the spindles and put on empty bobbins. This is called doffing and the boys are called doffers. Between doffs,

that is while the bobbins are filling up, the boys are at leisure and play, usually outside but near the mill door so that they can be called when needed.

Those of us who have had experience with doffer boys with their infinite capacity for using their surplus energy for all manner of mischief, can hardly recognize them as the weaklings as painted by the members of your organization. If any of you have doubts upon this subject and wish to spend a lively and interesting two weeks, I will secure for you a position in charge of the doffer boys in a Southern cotton mill, and if you retain your mental faculties at the end of that time, you will paint a different picture of the doffer boy from that you have been accustomed to see. They are full blooded American boys with health and energy and an infinite capacity for doing the things that they should not do, and boy for boy, I believe that they can lick any other class of boys in this country.

The trouble with your organization is that your representatives do not present the true facts. They take exceptional cases and give them to the world as average and usual conditions. You tell about the mill man violating the laws of his state, but your organization often violates a higher law than that of man, which says, "Thou shalt not bear false witness against thy neighbor."

I do not mean to give offense but I am here to tell facts and I do not believe that the donors and patrons of this organization intended that their money should be used to misrepresent conditions.

Speak of child labor in Southern mills to the average man or woman, and immediately a mental picture arises of a girl of 4 or 5 years of age, ragged and exhausted with a heavy burden, and standing over her a brutal man with a whip. It is the picture that has been created in the minds of the public largely by the efforts of the National Child Labor Committee, and in creating that impression, you have borne false witness against your neighbors.

I hold in my hand the editorial page of the latest number of the "Good Housekeeping" magazine. It contains an editorial intimating that children of 5 and 6 years of age are employed in the mills of North Carolina. On this page is a picture of a monument on which is written the word "PROFIT," and at the base of the monument lies the ragged figure of a child of not over 5 years of age.

Why did they illustrate this picture with a girl of 5? Why did they not put there the figure of a girl of 13, or 14, or 15 years?

I charge that it was done purposely to create in the minds of the public, the idea that the North Carolina cotton manufacturers are employing children of that age, whereas the minimum age limit is 13 years, and only in rare cases and in violation of the law, are children of fewer years being employed.

The picture was a violation of fact, and the man who produced it told an untruth as much as if he had used words.

A few years ago in a pamphlet issued by Dr. McKelway, was the picture of a small girl standing near a machine and the inscription below that machine indicated that the child was liable to be crushed and ground to death at any minute. Many a mother shuddered at that picture and hated the employers of that girl, when as a matter of fact she was standing near a section beam on a warper, one of the most harmless of machines, and it was almost impossible for her to be injured.

I could cite many similar cases where a half truth has been told and the wrong impression created, and I can say honestly that I have never seen a statement issued by the National Child Labor Committee relative to the Southern cotton mills that did not exaggerate conditions or contain half truths.

When your investigators come South they seem to be looking for the unusual and exceptional cases, and to have no idea of giving a square deal to the cotton manufacturers.

A mother, especially one who is working on the spoolers where there is considerable space, often prefers to take her little child in the mill and let it play around her rather than leave it with neighbors.

Where a family lives a considerable distance from the mill it is the custom to send the dinner pail to the mill by the young children and they usually reach the mill before stopping time. Such children are seen and either through ignorance, or intentionally, are represented as being employed.

There are, I am sorry to say, mills that violate the age limit law but the Southern States are essentially law abiding, and sooner or later every mill will be forced to comply with the legal requirements. The changes in such laws have been rapid in late years and it naturally requres time for mills, especially those that fought against changes to adjust themselves to the new conditions, but it will be done.

I do not think your organization has been granted any commission to enforce the laws of North Carolina, and coming from states whose violations of laws, including those of child labor, are far in excess of those of my state, I say that you should clean up your own back-yards before you attend to ours.

I do not wish to paint the condition of the Southern cotton mill operative as ideal. They work and work hard, and their surroundings and lives are not all that could be desired.

However distasteful the idea of manual labor may be to those who live by their wits, we have not yet reached the state where most men do not have to earn their living by the sweat of their brows.

Many of you have read Thos. R. Dawley's book, "The Child That Toileth Not." The cotton manufacturers of North Carolina purchased a considerable number of those books and distributed them, but I condemned them for their action.

Dawley's book contains a great deal of truth but he selected the exceptional and unusual cases and it is not a true picture of the section which it is supposed to cover. Dawley painted the picture as some mill men wanted to see it, just as your representatives paint their pictures as they believe you want to see them.

It is a fact however, that a majority of the people who have gone from the mountains or the small farms to the mills have immeasurably benefited their conditions, and it is also a fact that the child on the farm does harder and more injurious work and has less opportunity for enjoyment then the children in the mill.

I have never heard of your organization advocating age restrictions for the child on the farm and it is openly charged that you are afraid of the political influence of the farmer.

Volume IV of the 1910 United States census on occupation statistics gave the following for North Carolina as regards boys between 10 and 13 years of age:

Total engaged in gainful occupations	53,457
Engaged in agriculture	47,884
Hired out for farm and dairy work	7,560
In the cotton mills as bobbin boys, doffers, carriers, and spinners, mainly	2,304

The figures for girls of these ages in North Carolina are even more striking:

Total engaged in gainful occupations	30,822
Engaged in agriculture	26,196
Hired out for farm and dairy farm work	3,648
In the cotton mills as spinners, winders, spoolers, weavers and knitting mill operatives	2,319

These figures show that out of 84,279 children employed in gainful occupations, only 4,623, or 1 out of 16, were employed in cotton mills.

If it is your Christian duty to strike the shackles from child labor, why devote all of your time to one and allow the other fifteen to continue their labors?

Before closing I wish to say a few words relative to your proposed National Child Labor Law. The child labor question is not a national one and there being different conditions in different states, I believe that it is a question that should be regulated by the states.

The whiskey question is a National one because whiskey can be carried or shipped from one state into another and there be used to debauch its citizens.

The fact that a boy of 13 works in North Carolina, can in no way injure the citizens of New York or Massachusetts, and, plainly speaking, it is none of their business.

Because the citizens of North Carolina will not do your bidding you now seek to force your views upon them through the National Congress. North Carolima has always shown a regard for the welfare of her citizens, no matter how humble and has been a leader in the enactment of laws for their moral uplift.

We have driven from our state the bar-room with its insidious influence; the gambling halls and the dens of vice, and the observance of the Sabbath is rigidly enforced.

Most of you come from cities where the bar-rooms and the gambling dens hold full sway, where the dens of vice are filled to overflowing, and where theatres and places of amusement run full blast on Sunday.

Until you bring the moral stamina of your own states on a plane with North Carolina, you can hardly claim the right to dictate the laws by which we shall be governed.

In conclusion, I wish to say that the cotton manufacturers of the South are entitled to a square deal and I demand that your representatives cease misrepresenting conditions.

If you feel that the enforcement of our laws is your business and your duty, I wish to make to you a practical suggestion. When you find a case of employment of children under the legal age, publish the name of the mill and that of the child and its parents. Such an act will cause the violation to cease, and is far better than telling the world that you know of such a case and intimating that it is usual.

I have not intended that this address should give offense, because I believe that most of those who are supporting or conducting your organization, are Christian men and women, actuated by an honest desire to help humanity.

I have stated plainly the facts as I see them and I thank you for your attention.

STATEMENT BY NATIONAL CHILD LABOR COMMITTEE

Mr. Clark has brought against the National Child Labor Committee such a serious charge of misrepresentation of fact that it seems best to publish in connection with these Proceedings a categorical statement of the Committee's position in relation to the various questions raised by him.

I. "I have failed to note where you have shown one man or one woman whose health has been wrecked by early work."

Last December a questionnaire sent to North Carolina physicians brought 338 replies. To the first question, "Is it probable that the employment of children under 14 years of age in mills, factories, stores and other public or private buildings for 10 or 11 hours a day will be injurious either to the race or to the child?" 306 replied with an unqualified, Yes; only 17 said, No; 5 replies were conditional and 17 did not answer this question.

II. "I have seen your statements about the 'child at the loom,' but they are untrue because it is an impossibility for a child to reach from the front of the loom to the place where the broken threads must be tied."

Many more children are employed on the spinning frame than on the loom, but the federal Census of Occupations, 1910, reported 574 weavers 10 to 13 years old in the cotton mills of the country and of these 182 were reported from North Carolina. As it happens, the expression, the "child at the loom" was used by a writer not connected with the Committee in a magazine article for whose accuracy the Committee is not responsible.

III. "Those of us who have had experience with doffer boys with their infinite capacity for using their surplus energy for all manner of mischief, can hardly recognize them as the weaklings as painted by the members of your organization."

We would remind Mr. Clark that our photographs show many healthy looking children, and we have never claimed that the injurious effects of their work are immediately evident. Nor would we deny that the spinning done by girls is more physically harmful than the intermittent doffing done by boys. We have abundant testimony from physicians as to the harmful results of child labor in industrial occupations in general and as to the effect of the cotton industry upon the health of its operatives in all age groups. We see no reason to believe that the findings of studies made by physicians in other widely scattered regions would not apply to the children in the Carolina mills, and these findings are unanimous in showing that factory children are below the average for nonworking children in weight and physical strength. Where such studies have included employees in textile mills these textile employees are no exception to the low average of factory children.

(Reference is made to findings of Maryland Bureau of Statistics and Information, 1913; to article by Frederick L. Hoffman in Proceedings of National Conference of Charities and Correction of 1903; and to an article by Dr. Teleky of Vienna in Proceedings of International Conference of Hygiene and Demography at Washington, 1912.)

IV. "Your representatives do not present the true facts. They take exceptional cases and give them to the world as average and usual conditions."

"I can say honestly that I have never seen a statement issued by the National Child Labor Committee relative to the Southern cotton mills that did not exaggerate conditions or contain half-truths."

We have never made a statement which after careful study we did not believe to be true. We have never used the exceptional cases as if they represented average conditions, but we have emphasised the exceptional cases and shall continue to emphasise them so long as they continue to exist, because they make more urgent the need for action. But at the same time our findings and the findings of federal investigators have shown that the employment of young children involving violations of the present law is much more general than Mr. Clark realises.

(On this point see discussion by Dr. McKelway and Mr. Swift, printed below.)

V. "Speak of child labor in Southern mills to the average man or woman, and immediately a mental picture arises of a girl of 4 or 5 years of age, ragged and exhausted with a heavy burden, and standing over her a brutal man with a whip. It is the picture that has been created in the minds of the public largely by the efforts of the National Child Labor Committee, and in creating that impression, you have borne false witness against your neighbors."

As a specific instance Mr. Clark refers to a picture published in "Good Housekeeping" in connection with a notice of Child Labor Day. He overlooks the fact that the picture is a cartoon intended to drive home the point that childhood is being robbed of much that is best in life. (That it is difficult to assign an exact age to the child may be gathered from the fact that thirteen persons have given opinions varying from 4 years to 12!)

When the National Child Labor Committee began its work eleven years ago, the employment in the mills of children 8 and 9 years old was not uncommon, and many children of still more tender years were found at work. We have shown in our more recent pamphlets that conditions have so improved that while the children 8 and 9 years old (or younger) are still found occasionally at work in the mills they are much less frequently employed than formerly. We regret as sincerely as Mr. Clark the popular exaggeration of facts, for which we are not responsible. We regret it not only because it is not fair to the southern employer but because the grotesquely inaccurate picture of the brutal man with a whip which has been created by the cartoonists who are licensed exaggerators diverts attention from the central truth that most employers are thoroughly well-intentioned people who drift

along the path of least resistance unaware of their guilt in the matter of child labor.

(On this point also we would refer to Mr. Swift's discussion, below.)

VI. "A few years ago in a pamphlet issued by Dr. McKelway, was the picture of a small girl standing near a machine and the inscription below that machine indicated that the child was liable to be crushed and ground to death at any minute."

A thorough review of our publications leads us to believe that Mr. Clark must have referred to pamphlet No. 92, in which a picture shows a group of very young girls beside a warping machine with the following inscription: "Newberry Mills, S. C., noon hour. All are employees. The unguarded wheel and belt at the left are sinister neighbors for little girls' arms, skirts and braids. There was no factory inspection in South Carolina."

VII. "Where a family lives a considerable distance from the mill it is the custom to send the dinner pail to the mill by the young children and they usually reach the mill before stopping time. Such children are seen and either through ignorance, or intentionally, are represented as being employed."

Our agents have always carefully distinguished between the "dinner-toter" and the regular employee. But in this connection we would point out that it is not unusual for the dinner-toter to "help" in the mill during the dinner hour, and gradually to stay on as a regular worker.

VIII. "I do not think your organization has been granted any commission to enforce the laws of North Carolina, and coming from states whose violations of laws, including those of child labor, are in excess of those of my state, I say that you should clean up your own backyard before you attend to ours."

"The fact that a boy of thirteen works in North Carolina, can in no way injure the citizens of New York or Massachusetts, and, plainly speaking, it is none of their business."

Mr. Clark himself admits the need of interference by the enlightened men of his state in the relations of their fellow citizens with each other for the protection of his state. He does not profess to believe that conditions should be allowed to drift without regard for the welfare of future citizens. But we are all Americans, fellow citizens in the nation, and the welfare of the children in North

Carolina is as important to the citizens of New York or Massachusetts, as the condition of children in Fayetteville is to the citizens of Charlotte.

The work of the Committee has from the very start been national in its scope. Its members and officers have been drawn from the North and the South. Its campaigns have been conducted in all parts of the country where the situation demanded them, and had it not been for the Committee's denunciations of canneries and homework conditions in New York the citizens of North Carolina would to-day probably be unaware of the existence of these problems.

(On this point refer to Mrs. Kelley's contribution to the discussion following Mr. Clark's paper, printed below.)

IX. "I have never heard of your organization advocating age restrictions for the child on the farm and it is openly charged that you are afraid of the political influence of the farmer."

The seriousness of the evil of agricultural child labor was referred to at the Washington Conference at the afternoon session of the previous day. Certain phases of agricultural labor, such as the wholesale employment of children in berry fields and truck farms, and of the children of roving bands of cotton pickers in Texas and Oklahoma, have been studied by the Committee and age limits emphatically recommended in various statements and publications. Indoor employments have received more attention than agriculture hitherto simply because the condition of the factory child was most urgent and the means of the Commitee have been too limited to attempt to cover the whole field of child labor at the same time.

X. "If you feel that the enforcement of our laws is your business and your duty, I wish to make to you a practical suggestion. When you find a case of employment of children under the legal age, publish the name of the mill and that of the child and its parents. Such an act will cause the violation to cease. and is far better than telling the world that you know of such a case and intimating that it is usual."

We have consistently followed the policy of publishing the names of mills at which we have found violations together with the ages of children employed, but we have purposely refrained from publishing the names of the children, because they are not to blame for their

premature employment. We believe that enforcement is the duty of the state which has enacted the law, and that it is our business to work for a public opinion which will demand that the state install the machinery of enforcement.

DISCUSSION

DR. MCKELWAY (in part): "Mr. Clark's father is Chief Justice Clark of North Carolina, and one of the most important steps taken in North Carolina for the protection of childhood was Justice Clark's decision that in case of accident to a child under 14 no factory could plead contributory negligence.

"Mr. Clark admits that there are violations of the law. In an investigation made by the federal Bureau of Labor in 1908, 75 per cent of the cotton mills visited in North Carolina were violating the law. And North Carolina is now the only state in which the labor commissioner has no right to enter a mill and see whether the laws are being enforced.

"As for the physical effects of premature toil, may I remind Mr. Clark that the people in the mills come from the same English stock that has suffered degeneration from child labor in England, and I don't know that there is anything in the climate of North Carolina to prevent children who work eleven hours a day in the mills from degenerating.

"Mr. Clark says that this is not a national question. We think it is and we believe Congress will pass a law to prohibit the shipment of child-made goods in interstate commerce. We who live in communities which are a little more favored in the protection of their children are beginning to assert a social conscience which says: 'You can not compel us to buy products made by child labor.' We have that right under the Constitution. And I shall have to quote Mr. Clark, Senior, against Mr. Clark, Junior, on that point because Justice Clark believes in the constitutionality of a federal child labor law."

MR. SWIFT (in part): "We have had on our statute books since 1907 a law which says that no child under 13 years shall be employed except as an apprentice, and then only after having attended school the previous year. That law has been interpreted to mean 12 years, though the mill people never have gone through

the code-procedure of apprenticing these children. So far as I have known the mills of North Carolina, 90 per cent of them have been working children down to the age of 12. Two or three mills have told me that they have raised their age limit to 13, and I have taken some pride in that. And within the last year two suits have been settled paying for accident to a child because he was employed under 13 and therefore could not be guilty of contributory negligence.

"We have no enforcement of the child labor law in North Carolina. Our Commissioner of Labor has authority to investigate the death of a man in a mine. We have children killed in our mills in North Carolina. Our Commissioner of Labor has no authority to cross the doorsill to investigate their deaths. Last year we did give the County Superintendent of Public Instruction some authority. I found a mill within a half mile of a schoolhouse with children 10 years of age at work. I sent the names of the children to the Superintendent of Schools and he never answered my letter.

"Most of you I suppose are wearing some cotton. I suppose some of that cotton was spun in North Carolina. Practically every thread of cotton spun in North Carolina or in South Carolina has been handled by children under 16. A great deal of it has been handled by children under 14 and by girls who work 11 hours a day and have not the privilege of the doffer boy to go out and play between doffs. A great deal of it has been handled and spun by children under 13 and not a little by children under 12; some of it under my own observation by children down as low as 10, but not as much as there used to be."

MRS. FLORENCE KELLEY: "I am grateful to Mr. Clark for coming to our meeting. It has been very difficult ever since the Committee was founded to induce manufacturers to spend time, as two manufacturers are doing on this occasion, to discuss these matters with us. However much we may differ, I think we owe thanks to every one who does so.

"Mr. Clark lays it down that this is not a national question. Some years ago at the last meeting that we held here in Washington, I pointed out a curious discrepancy between two lines of action of our Republic in regard to the cotton industry. As a nation acting through Congress we give lavish protection to the cotton industry. No industry has received more generous protection through the national lawgivers than the cotton industry almost since its beginning

has received through the tariff. But when it is proposed to protect the children who work in the cotton mills a quite different view is taken. It is urged that cotton is of national interest, but the children belong to the states. We have tried that for a number of generations and it has worked exceedingly badly.

"Mr. Clark urges that we of the North sweep before our own door. I have been sweeping before mine for thirty-three years, and it is not as clean as I wish it were, because of the pressure of southern competition. Such as it is, I have been sweeping and many other people have been sweeping, and we can point with pride this year to this result; that in the State of New York which is not wholly without textile industries, cotton among the number, our children can not legally go to work in mills of any kind until they are fully 14 years old, and have finished the work of six full years of the public schools, and have passed the examination which admits them into the seventh year classes of the public schools. Then if they are in good health and so certified by the local Board of Health, and of the stature of children of their alleged age, if they have their certificate of admission into the seventh grade classes of the public schools, they may go to work.

"I venture to suggest to Mr. Clark that he do a very generous thing, that he invite this Committee to meet next year in North Carolina and to make a tour of the state to see the children in the sixth and seventh grades of the public schools in the mill villages of the state. That would be absolutely convincing to all of us. It would refute, certainly for next year, any statements we might be inclined to make as to recorded illiteracy and recorded labor of young children in North Carolina. I can promise that I would accept such an invitation."

MR. HOMER FOLKS: Mr. Clark's plea for the southern mill owner was most interesting. It aroused a line of thought in my mind, which has often occurred to me in the past. He complained of the ungracious statements made, and asked for a square deal, that the facts should be dealt with always with strict accuracy. I wish I could encourage him to feel that the mill owners would get that sort of a square deal. But no such encouragement can be held out, as a matter of fact. I would like to give warning that instead of getting more nearly a square deal in the sense of more nearly accurate statements, it is likely in future to be less of a square

deal because that is the history of all active movements directed against serious evils. I should greatly regret any inaccurate statements made by the Child Labor Committee or anyone else connected with this movement. Without any hesitation we will gladly submit any statements made by the Child Labor Committee to the acid test. But it is perfectly true that in any important movement, the more serious it is and the hotter the fight, the more exaggeration and over-statement will creep in. It is utterly impossible, utterly futile, utterly contrary to every movement that was ever carried to success for anyone to expect a square deal in the sense in which Mr. Clark asks for it. That used to disturb me much more than it does now, because I have observed various movements dealing with social evils, and have come to believe that even in untruths there is a great deal of truth; even in inaccuracy there is a great deal of accuracy.

I have friends connected with the brewery industry, and they complain bitterly that they are not getting a square deal, that an enormous amount of things that are being said against beer are not true, and that people have grown up to old age drinking beer, which is a demonstrable fact. The same is true of the fight against whiskey. It is full of untruths and exaggeration and over-statements. But one thing I have noticed is this, that you do not find similar exaggerations and over-statements and inaccuracies about other things. Take for instance butter or bread. There is no such wave of exaggeration and misrepresentation going on against bread and butter and eggs or other things of that kind. Why the difference? Why are whiskey and beer subject to the enormous amount of inaccurate statements while these other things are not? Therein appears what I said a moment ago, that in inaccuracies and untruths there resides a great amount of wisdom, accuracy and truth. It shows the underlying instinct of the people as to what is right and sound and desirable. And when the people hits, it means to aim straight. It hits fair and square, and every person engaged in anything that is socially wrong must expect from time to time to be hit below the belt.

Miss Herkner (in part): "An employer who spoke last night said that the employers in the cotton industry, more than in any other industry in this country, were governed by the traditions of the industry. That explains to me some things that I have found in my work as a child labor inspector. May I say in passing that,

as a state officer, I must be absolutely fair to the employers of children, and I try to have a perfectly fair attitude toward the whole problem of child labor. During the last year I happened on three incidents which show what an inspector meets with among the very best men in the community (such as the cotton mill men are in Maryland)—men who cannot be said actively to oppose child labor laws.

"In Maryland permits are issued by county superintendents of schools or some person appointed by them. Last year, a certain school teacher from a county in which cotton mills are numerous, said to me, 'You must take this issuing of permits off my hands. I am in the mill district and I can not do it the way the law requires me to do it, and the children will not be of the age required by law if I have to issue the permits.'

"Then there is a county near Baltimore where the children get their school records from the teacher in the mill district and bring them to the Baltimore City office when they apply for permits. A child claimed to be of legal age, but convincing proof was not forth-forthcoming. We sent to the teacher for a statement as to the child's age. The teacher's statement showed the child to be under legal age and the permit was refused. The teacher was dismissed by the mill people, although she had done nothing more than give us the required statement from the report in her book. In that very district not three months ago our inspectors found three children born in Maryland, who had never been in school and were now of legal working age."

Mr. Lovejoy (in part): "May I remind Mr. Clark that a federal law would not only protect people outside of North Carolina from receiving goods manufactured by children in North Carolina but it would protect people in that state from having to buy our tenement-made goods from New York.

"It has been one of the rules of the National Child Labor Committee from the beginning, and it is understood by every one of our agents, that one proven case of deliberate misrepresentation is ground for immediate discharge. Soon after its organisation the Committee realised that it would have to contend against these forces of opposition and that the Committee must be in such a position that its opponents would have some redress if it were not true to its task. Therefore the Committee applied for a charter and was duly in-

corporated by act of Congress. Any case of falsehood perpetrated by the Committee upon the public can be brought before the courts and the Committee can be punished for misrepresentation. Thus far no charges have been brought against us, and we stand ready to defend any that may come.

"I want to add a word of appreciation of Mr. Clark's coming here, and I will ask him to close the discussion."

MR. CLARK: "I have lived with the people and worked with them in our state. I am interested in their moral uplift and welfare more than any person in this room to-day. I know it does not injure a boy above 12 and a girl above 14 to work in a cotton mill. Until you can prove that it does there is no use talking theory. I appreciate very much the opportunity which you have afforded me."

The Census of 1910 showed 1,882 girls under 14 in cotton mills of North Carolina and 2,121 boys under 14. Our own findings within the last twelve months show that many of these children are under 12 years of age. NATIONAL CHILD LABOR COMMITTEE.

Fifth Session: Symposium on a National Children's Charter

Homer Folks, Vice-Chairman of the National Child Labor Committee, Presiding

---

THE CHAIRMAN: "If we look back over social work through several decades, we see that there was a period in which a considerable number of new social agencies were developed to accomplish what seemed to be quite definite and particular and separate purposes. Then there came a second stage when these agencies began to see that they dealt with different phases of one and the same thing, and that it was necessary for the largest usefulness that their work should be coordinated. And so now in the work with children's problems we find two distinct tendencies: First, in each state for all those dealing with children to work together, and second, for the different states to be brought into line on a coordinated or harmonious basis so far as possible.

"It is evident that we can not have a children's charter in the sense of a national act dealing with most of the subjects affecting child welfare, and it is equally clear that we do need leadership in all the different states in finding our way to attain something like a standard of legislation affecting children. At present we do not even know exactly what the laws affecting children in the various states are. In New York, for example, we have consolidated and classified statutes, and yet if any one asks what are the state laws affecting children no person in New York of any position can without considerable research answer that question.

"This meeting represents the aspiration toward seeing what can be done to formulate standards for laws that deal with children. I will ask Mr. Lovejoy to give an account of how this meeting came to pass."

MR. LOVEJOY: "The plan for this session was arranged in cooperation with Mr. Roger N. Baldwin, of St. Louis, who had read at the last National Conference of Charities and Correction a very thoughtful paper outlining suggestions for the codification of laws relating to children in the different states. He called attention to this legal chaos to which the Chairman has referred, and to the further fact that in a number of states plans were on foot to change

or to coordinate the laws; and he expressed the belief that if the subject could be given a sufficiently careful and detailed study, it would be possible for state commissions on the codification of children's laws to have the benefit of advice and information that would come from people in all sections of the country interested in this plan. Mr. Baldwin passed these suggestions on to the National Child Labor Committee saying that since the work of the Committee brought it into immediate contact with so many problems in relation to the child—not only child labor, but education, juvenile delinquency, health problems, and problems of dependency—it seemed to him that we might take the first step toward bringing the organisations of the country together for a discussion of this codification."

DR. CLOPPER then outlined the scope of the proposed Children's Charter: "Three efforts have already been made to standardise certain child welfare activities. The White House Conference of representative social workers six years ago set forth in a definite statement the principles on which should be based the dealings with orphans and other children deprived of their natural means of support, and its conclusions have been of great value to communities in their treatment of this problem. Later, the National Child Labor Committee drafted a standard child labor bill, which was adopted by the United States Commissioners on Uniform Laws, and has been enacted into law in part by a number of the states. And under the direction of Mr. Flexner a model juvenile court law has been drafted and submitted to the country, having already been adopted by Monroe County, New York, where Rochester is situated.

"Nearly every state in the Union has on its statute books a great mass of legislation for the protection of children; some of it is archaic, some is extreme, much is incoherent and incomplete, and not a little is contradictory and unenforceable. This condition prevailed in Ohio as elsewhere until two years ago, when all the laws of that state affecting children were codified by an official commission and recommendations were made to the Legislature for the enactment of new laws and the repeal of old ones, with a view to bringing the legislation of the state up to the standards generally accepted in each field of child welfare. After suffering may amendments the report of this commission was adopted by the Legislature, and to-day Ohio has the only children's code in the United States. This winter a similar commission will submit its report to the New Hampshire

Legislature. In Colorado the proposition was before the people at the election last November but was defeated.

"Now in a general children's charter, there could be grouped all the recognised standards for the welfare of children, the basic principles of each department of child welfare could be clearly set forth, the best methods of dealing with each problem prescribed, and the relationship among all the branches of social work for children revealed and emphasised. The task is not an easy one, and yet the elements of such a charter fall into relatively simple groups. The first we might call the Preservation of Life and Health, including the segregation of the unfit so that the birthrate of abnormal children may be reduced, the requirement of physical fitness of applicants for the marriage license, freedom of mothers from toil before and after confinement, birth registration, insistence upon responsibility for illegitimacy, and medical inspection of children in school, in institutions, and at work.

"The second group of activities might be termed Protection from Want, Abuse, and Crime, and would include the care of dependent, neglected, and defective children, protection from cruelty and premature toil, regulation of work conditions, correction of delinquency, fixing the age of consent, juvenile courts, probation, provisions for public relief, safeguarding of property rights and protection from obscene literature, intoxicants, tobacco, drugs, dangerous weapons, etc.

"In the third and final group would be found the constructive efforts for the welfare of children under the heading Education and Recreation, comprising the provisions for schools, compulsory attendance, industrial training, vocational guidance, social centers, parks and playgrounds and libraries.

"The administration of these functions can not be so clearly divided because the agency having the control of an activity in one group may also have charge of another in a different group—as, for example, the public school authorities enforce the compulsory attendance law and also usually issue work permits to children under the child labor law—but the organisation of state and local machinery for the administration of all branches of child welfare work and their interrelations should be studied and worked out on a logical basis.

"Just as the preparation of the Ohio code and the fight for its enactment not only served to educate the public in matters of child

welfare better than anything else that had ever been attempted in that state, but also brought social workers together because every individual and society engaged in child welfare work was affected by its provisions, so I believe that in a larger field a national children's charter would promote more active and intelligent cooperation towards a sane solution of all these related problems."

Following Dr. Clopper several representatives of various phases of child welfare work spoke.

DR. PHILANDER P. CLAXTON, Commissioner of Education: "I approve heartily the idea which seems to underlie this plan for a National Children's Charter. What has been said of the fragmentary character of laws in the several states applies also to the laws pertaining to education. American people believe in public education. Every state has a public school system. Every American statesman of first-rate importance has put himself on record as favoring education full and free for the masses of people. The educational ideal is national, but the support and control of schools have been left to the several states. Originally each community was responsible for its public schools and provided each in its own way for their support. Conditions varied widely in different sections, states and communities. Out of these varying conditions grew varying and contradictory laws. As population has multiplied, the separate communities have coalesced and their conditions have become more uniform. Within recent years there has been a rapid increase in the amount of money invested in education. Legislation has not kept pace with development and increase of funds. There is need of greater uniformity. There is need for the promulgation of some ideal large and strong enough to attract the attention and gain the respect of educators and legislators everywhere. Only in this way can the closer cooperation of the people be brought about. An ideal accepted as a standard will produce a tendency toward uniformity in legislation and can be modified as may be needed for the several states.

MR. C. A. PROSSER, Secretary of the National Society for the Promotion of Industrial Education: "In what I shall say, I speak as an individual and not as the representative of any organisation.

"From the standpoint of the state, the purpose of childhood is to prepare for social well-being, for social and economic efficiency. This is not only an heritage to which each child is entitled as a part

of his inalienable right to life, liberty, and the pursuit of happiness, but a social end which the state must secure for its own preservation. How far the state should go in scope or method depends not only upon how far it finds the exercise of the right to control the care and education of its children necessary, but how willing it is to pay the cost.

"Public opinion to-day supports the idea that the state should assert its guardianship over the adolescent until he is at least 16 years of age. Within five years this conception will be written into the legislation of many states, and public opinion will be reaching out toward 18 years as the point below which the state shall deal with the adolescent as a ward committed to its care for regulation and training.

"I submit the following suggestions as to principles and policies for consideration in a national children's charter:

1. No child should be permitted to leave school to go to the farm, the home, or the shop until he has secured the minimum general education which common experience shows is necessary for success and happiness.

2. No child should be allowed to leave school to go to work until he is physically fit.

3. Child labor regulations prohibiting the employment of children in wage-earning under a given age should always be accompanied by compulsory education laws insuring attendance at school up to the same age. I understand that in most of the southern states constitutional limitations prevent the passage of school attendance regulations for children over 12 years of age; in these states child labor laws with a 14-year age limit seem justified even though children are not required to attend school after 12, but every effort should be made to amend these constitutions.

4. The present constitutions of the same states exempt from the operation of compulsory attendance regulation passed by the legislature children under 12, who are weak in body or mind, or who can read or write, or who have been excused for cause by the district school trustees. These exemptions may have been justified in an earlier age, but they are not to-day.

5. The schools must enrich their courses of study so as to appeal to the varying tastes and abilities of adolescents, and make school attendance more valuable.

6. When the adolescent who is within the age over which the state has assumed responsibility goes to work, he should be subject to the same right of supervision and control by the school as if he had remained for a longer period as a full-time student in the school. He should be placed in an occupation which the school authorities approve. He should be required to attend a part-time or continuation day school for a part of the working time during the entire term the public schools are in session. The time given to the school by the young worker of 14 should not be less than thirty hours during each bi-weekly period; by the worker of 15, not less than twenty hours; of 16, not less than ten hours; and of 17, not less than five hours."

REV. WM. J. KERBY, Catholic University at Washington: "By the nature of the case, the National Child Labor Committee works for the enactment of laws to protect children against industrial exploitation. The conscience of the nation is back of the work, and this Committee is one of the organs by which that conscience expresses itself. In doing this specialised and partial work, we must be guided by what may be called organic vision. Law is one social force. There are many others. Our work will be best done when we estimate it, prosecute it, and finish it in the full light of its plenary relations to the other social forces involved in the rescue of the nation's children.

"The condition of children in industry proclaims the breakdown of political constitutions which should define and guarantee human rights at the point of greatest menace. Society was caught by our industrial development, without sufficient protection for children against the new menaces to health, development, morals, and ideal living. The condition of children in industry proclaims the breakdown of industrial institutions which has upset the moral and social equilibrium in which alone justice is possible. Any system of production which demands the work of children at the expense of health, morals, and normal development is impeached by that very fact. Any system of distribution which makes necessary the work of immature children to supplement the labor of their elders in securing normal income is impeached by the very fact.

"The condition of children in industry proclaims the defeat of cultural and religious institutions, from contact with which children are effectively shut off when they are exposed to the unre-

lenting exactions of industry. Home and church and school are the channels of culture, the guardians of spiritual vision, the forces of genial human development.

"The law-making process, then, on which we specialise must be judged, directed and modified by its relation to cultural institutions and processes. There is an appalling drift toward law-making as the sole remedial agency left to us. The Child Labor Committee can do two kinds of work with good effect. It can fight for laws which are demanded by every standard of humanity and progress. It can in addition set forth the limits of law, and the fundamental duties of home and school, of religion and culture, and hold the American conscience to this completer organic vision. Law and laws alone can not but undo democracy. Law and laws taken in right relation to other social forces out of which all social order arises and is main tained, define and protect social justice with such balance as satisfies every reasonable human standard. A children's charter gets as much power from forces outside itself as it does from within itself. No law operates happily except by force of influences not contained within itself. The best insurance for happy execution of laws that you will write into a children's charter will be found in the social forces, outside of that charter, which you stir to quick and sure action within their own spheres. Help society to hold home and school and church true to their fundamental mission; help home and school and church to maintain their places in the social organism; force into public opinion the moral and spiritual appreciation of child life which will chasten and subdue industry; then a children's charter will be the effective promise of the redemption of the nation's children from their modern bondage."

Miss Julia C. Lathrop, Chief of the Children's Bureau: "I am very much in favor of the discussion of a national children's charter. If we ever succeed in getting a charter, it will be a charter secured with the recognition that it can never be completed, and shall never be considered as complete. The moment it is complete and completed, it is dead. Some one has said that law is the conviction of yesterday, and that public judgment and vision are always a day ahead. When we begin to think about the fundamental yet detailed statement of rights which shall apply justly to all the children of this country, we are confronted not only with that vast area of need which Mr. Clopper described, but we are

confronted as practical people with as many areas of difference as there are states in this Union. Whatever we say and do about a national charter, we know that the humanitarian legislation of America is going to be secured and administered through the individual states; and there are no two states in this country whose ideals and responsibilities are identical. So we shall begin a vast piece of work. We can not enter upon it too seriously. We shall only make headway with it as we have been progressing with similar efforts for uniform legislation. The one instance which immediately occurs to me is the matter of vital statistics. It is twelve years since Congress passed a resolution begging the various states to pass uniform laws for vital statistics. We still lack vital statistics for this country as a whole. We have neither uniform law nor uniform enforcement. We do not think about it, therefore we do not get it. Perhaps in half a generation more we shall know how many children are born in a year. Now we do not know. As nearly as we can find out there is not a single state which has complete registration of births.

"We must not be discouraged about the children's charter; the legislation which it will require is going to come slowly at best; but it is going to be illuminating to discuss it and work toward it. We must keep the charter as flexible and noble as Dr. Kerby has urged, and realise that it is going to meet in each state local conditions which will tend to color it; and its vitality is going to depend upon the intelligence and vigor of the people in each state. We are glad that the National Child Labor Committee has undertaken the discussion of a charter and a code."

Mrs. Frank Miles Day, of Pennsylvania, Miss Lillian Wald, of New York, Mr. Walter Ufford, of Washington, and Hon. Frank A. White, of Maryland, also took part in the discussion.

PROFESSOR SAMUEL MCCUNE LINDSAY, of Columbia University, offered resolutions and in presenting them he said (in part): "It is evident from the unanimous approval of all the speakers to whom you have listened this afternoon that there is a desire to do something in the matter of formulating a statement of methods, perhaps a classification of laws, dealing with child welfare. There are three things that might be done which probably have occurred to us all during this discussion. First, we might attempt to draw up a general statement of principles and methods, part of which would be a legislative program, but much of which would be rather in the nature

of a guide to private societies and individuals dealing with the problems of child welfare. The times are propitious for that undertaking just now. Second, we might attempt to formulate through some existing governmental agency like the Bureau of Education, the Children's Bureau, or other agency, a children's charter which is essentially a bill of rights. Reference has been made to the children's act of 1908 in Great Britain, which does not claim to be a children's charter. It is part of the children's code as now embodied in three general acts of Parliament together with various amendments: the consolidated factory acts, the consolidated educational acts, and the children's act of 1908. So far as I know there has been no attempt to formulate a children's charter. Third, we might attempt to bring together the body of laws relating to children and codify them by striking out things that overlap, making slight verbal changes wherever necessary, and bringing the whole law relating to child welfare into working relation to all its parts. That is essentially a lawyer's job. It is not a thing any existing public or private authority could do without the cooperation of the interests represented at this meeting. But I doubt whether a satisfactory code can be formulated until we make further progress in the matter of formulating a bill of rights for the child.

"With these alternatives in mind it seems to me we would do well to begin with discussion of a proposal to formulate the rights of childhood, which would inevitably call for the cooperation of the various organisations working for child welfare. If it had no other value it would require them to look over their own program of work in its relation to other programs of work. Some of the rights of childhood I attempted to formulate several years ago in an article on Legislation for the Protection and Conservation of Childhood* as follows:

The right to be well born.

The right to parental name, protection, and support.

The right to leisure, play, and recreation.

The right to education and to exemption from work until physically and mentally fit for some specific task, and to a longer period of exemption in occupations which are physically or morally hazardous.

* Cyclopedia of Education, Edited by Paul Munroe, Vol. I., p. 631. New York, Macmillan, 1911.

The right to protection from inhumane treatment.

The right to protection of health and morals.

The right to another chance in a decent environment, physically and socially, when guilty of infractions of the law.

In this list of rights, which could easily be made more comprehensive now, you find many already recognised and guaranteed in our laws. Others have a semi-public recognition in the fundamental aims of various educational movements. If some organisation or joint committee were to collect and collate the rights guaranteed and implied in the social work of modern communities relating to children, we would have a program for discussion and the true basis for wiser legislative action. I know of no private organisation that could well undertake this task unaided. Perhaps we could persuade the federal Children's Bureau whose organic act, it seems to me, contemplates just such tasks, to undertake it. Therefore I beg to submit to the meeting for reference to the Board of Trustees of the National Child Labor Committee, a resolution which has been drafted by those interested in the program of this afternoon.

Resolution on a National Children's Charter.*

The rapid growth of the body of legislation for the welfare of children in recent years, the adoption of new and higher standards for their protection and education, and the creation of diverse new public social agencies in states, counties, and cities, have all combined to produce a strikingly chaotic condition of children's laws and their administration in most states of the Union.

This situation is characterised by conflicting statutes within the same state; unequal public protection for children in different parts of a state; adequate provisions in one line of activity and grossly inadequate provisions in another; high standards on the statute books and defective machinery for administration.

As a result of this condition, a growing sentiment among all groups active for the welfare of children throughout the country is voicing a demand for the correlation and codification of these children's laws within the various states. Already one state has extended and codified its laws and other states are preparing to enact new and complete codes of legislation affecting children. Appeals are being prepared to a number of the forty-six legislatures in session in 1915 for the appointment of commissions to draft such codes.

In view of this growing movement it is highly desirable that there should be collected at the earliest moment all possible information and material covering existing and suggested legislation for the welfare of children and covering also the administration of these laws in relation to state, county and city.

---

* These resolutions were unanimously approved by the Trustees of the National Child Labor Committee, January 26, 1915.

The collection of this information is a national undertaking. It is, too, a national obligation.

We, therefore, representing the Eleventh Annual Conference on Child Labor under the auspices of the National Child Labor Committee in meeting at Washington this sixth day of January, 1915, urge upon the federal Children's Bureau, created by Congress for the purpose of investigating and reporting upon all matters pertaining to the welfare of children, the early assumption of this great service to the children of the nation.

In urging the undertaking of this work we are confident the host of organisations and individuals throughout the country who are interested in child welfare, appreciate its need, and we call upon them to join at once in expressing to the federal Children's Bureau their desire to see so far-reaching a service promptly assumed by the national government.

The adoption of the resolutions was moved by MRS. FLORENCE KELLEY and seconded by MISS LILLIAN D. WALD. DR. CLAXTON said: "I heartily approve of the motion. All laws pertaining to education and child labor are now being digested and codified by the Bureau of Education. This will cover part of what is called for in these resolutions and it will be a service for the public." Reference was made to other compilations of health laws and laws relating to juvenile delinquency. The resolutions were unanimously adopted by the meeting without further discussion.

Sixth Session: The Child, A Ward of the Nation

Homer Folks, Presiding

THE CHILD, A WARD OF THE NATION

WILLIAM H. MALTBIE
President of the City Club, Baltimore, Maryland

The term "guardian" involves two separate ideas: guardianship of the person and guardianship of the property or the estate. The guardian of the person of a minor ward is under the responsibility of taking charge of the development of that ward, seeing to it that he is properly protected, properly fed and clothed, and educated, and trained for the business of life. The guardian of the property has no such duty. It is a matter of indifference to him whether the child is developed or not. His function is merely to safeguard the property of the child and when the child reaches his majority turn over the property unimpaired. If the guardian fails to do this he must pay the penalty.

It seems to me that we have been too much given to thinking of the child as a ward of the public from the first of these two points of view. In a certain sense the public, through its governmental organisation, is responsible for the development and education of the child, or in other words is in the position of a guardian of the person and our appeal has almost always been based upon this relationship, that is, has been an appeal for the development and protection of the child for the sake of the child himself.

I would not question for an instant the importance of this point of view, but the difficulty is that under our form of government, with individual states reserving to themselves all authority except that specially delegated to the nation, this guardianship of the person belongs logically and properly to the individual states. Now

the individual states have to a very great extent failed to meet the duty incumbent upon them and some of us are ready to urge that this duty should be transferred to the nation. If we expect our request to be seriously considered we must give it a logical foundation, and it seems to me that this logical foundation is to be found in the second phase of guardianship, guardianship of the property.

It will sometimes happen that a man finds himself in charge of something of value belonging to the child for the misappropriation of which he must pay the penalty. In such a case a wise man would at once have himself made the legal guardian in order that he might have the authority with which to protect the property and incidentally to protect himself from the penalty for its loss.

The nation is in that position. There are certain valuable rights which belong to the child which are hard to define, but which perhaps may be described as the right to live up to the American standard mentally, physically, and morally, a standard which is the result of the development and progress of the race, a standard which is higher than that of many other nations, is higher to-day with us than it was yesterday, and will, we trust, be higher to-morrow than it is to-day. The right to live up to this standard is the property of each of us and the property of the child. The nation may never have accepted the duty of protecting this right, but the protection of it can rest nowhere else, and if this right of the child is not protected and surrendered to him intact when he reaches his majority, it is the nation that must pay the penalty.

You cannot develop a stunted race without an injury to the race. You cannot take a single child that has in him the making of a good citizen and dwarf him in babyhood, deprive him of his physical and mental inheritance without doing something more than merely wronging him. You and I and each of us—the nation—pay the penalty. If this is true, and I don't think any man who makes a study of political and economic conditions or is interested in the development of the nation and the race would question its truth, then the nation is in the position of being the guardian of the property of the minor. If the nation has not the legal right to protect that property, the sooner it gets it the better for the child and for the nation itself.

How can such power be gotten? Under our Constitution the nation received only certain delegated rights, while all others were

reserved to the states. We went only so far in the surrender of rights by the states to the nation as the Fathers believed necessary to make us an effective unit against the outside world and prevent conflict between the states. But with our development we have found that the powers conferred upon the nation as originally understood were not sufficiently broad. This difficulty might have been met either by granting broader power or by giving a broader interpretation to the powers already granted.

We have chosen the latter of these methods. Our courts have found that the interstate commerce clause was sufficiently elastic to cover a multitude of things which the Fathers never contemplated. We are able under this clause to protect game birds and we have now pending a bill to protect migratory fish. If the bill passes, we in Maryland hope to bring under its protection the crab, because he makes an annual trip across our Maryland line into the Virginia waters at the mouth of the Chesapeake Bay, and some of us much regret that we can not bring the oyster under similar protection because of his non-migratory character. How much further we shall carry this stretching of the interstate commerce clause no one dares prophesy. The development of transportation systems has consolidated the set of scattered state units into a national unit, and under these changed conditions state control of certain phases of our national life has broken down. As practical men and women, believing that state control has failed, that national control will succeed, we demand national control. If this can be given by a further stretching of the interstate commerce clause well and good, but sooner or later as capable, practical, thinking men and women, we will tire of working under inadequate authority stretched far beyond the limits of the intent with which it was granted, and will demand that the nation shall be given the full grant of the powers necessary for the performance of the duties that rest upon the nation to-day, just as the Fathers themselves demanded that the nation should have the full powers to perform the duties that rested upon it at the beginning of the nineteenth century.

SOME SECONDARY CONSIDERATIONS

WILEY H. SWIFT
Secretary for North and South Carolina, National Child Labor Committee

When Dr. Murphy laid the groundwork of the National Child Labor Committee, he was looking directly, I am sure, at the child worker himself. In fact, if you get out at 5.30 of a cold December morning and see the boys and girls hurrying to their jobs and realise that they are going to put in ten or eleven hours of work, somehow the picture does not fade. Yet that is not all there is in this question of child labor. There are some secondary, or better, accompanying matters that must be considered.

Child labor, as an actuality, exists in certain well-defined communities. As a rule you find one child worker beside another. I don't care what the reports as to the employment of children in agricultural industries show, I am convinced that the majority of the people of America do not believe in the employment of young children as regular hired hands. So we know where to find the child workers. Any man who wants to find them in my state can not possible miss the road. Anybody he meets can tell him where to go. One of the most harmful effects upon the whole state life lies in this one fact, that in certain communities it is recognised as respectable to work children. It is not a question altogether of the child: it is a question of the attitude of the whole people with reference to the child. Men and women, grown up and strong, are willing to carry one end of a handspike while a little girl in short dresses carries the other. A community which would see without shame its girls walk into a house of ill-fame is far gone. A community in which it is respectable and even commendable to put young children to work is missing some of the best things that can be developed. For it is a fact that a great deal of that which makes for culture and civilisation springs up in the human heart because of the fact that the child is the subject of care and protection. And it seems to me one of the most serious hurts that can come to society is to have established a large number of these communities where it is not disgraceful to work small children.

Closely akin to this in its effect on community life is the matter of the violation of the laws relating to the employment of children. In North Carolina the legal age limit is 13. This has been the legal age limit for years, yet in the last three years I have seen hundreds of children under 13 and scores under 12, working 11 hours a day. The state enacts the law but fails to provide special machinery for its enforcement. The result is that the parent and the community easily come to the conclusion that some laws are made to be read only. The open violation of the law is in connivance, in fact in conjunction, with the mill owner. It is a short and easy step to the conclusion that the reason the law can thus be ignored, jeered at, is that the mill man, the man of money, has influence, that he is too big to be made to heed the law. It is a dangerous thing to show people that where the rich, the influential, are involved the law has no force. How better could you plan to destroy respect for the law? It is the first blow of the pick in undermining that respect for the majesty of the law which must ever prevail in well-ordered society. A law that is not enforced is no law at all. It is simply a false advertisement. And I can not think that a law relating to the employment of children is any exception to the rule.

But there is another secondary consideration. As I have watched the currents of thought in our country it has seemed to me that all of them which count have gathered into a desperate struggle to give every person a fair chance. What more unfair thing could there be than taking a child at the age of 12 out of school, out of his play, away from the fishhook and the 'possum dog and putting him in a mill as a wage-earner, hamstringing him for life, and then expecting him to run a good race? And if that is not unfair enough, what could be more unfair than asking a certain part of our population to compete in actual labor every day with boys and girls under 14 years of age? This, it seems to me, is the most vicious of all unfair competition.

This cultivation of the belief that to work children is not disgraceful; this training of men and women in the belief that some laws may be ignored, and this passive submission to unfair competition, have done much to harm our American ideals and to make some of our people willing to let certain primary rights pass out of their hands. I have seen a mill village in my state with five to seven thousand inhabitants and with no municipal government

except that of a Civic League—no elective officers. I am not saying that the government is bad, but I do say that it is a bad sign when five thousand people turn over all the town government to a Civic League. It shows they have forgotten their duties as well as their rights. In this same village I saw one year ago the same schoolhouse that was there sixteen years ago; and the village has grown up in the sixteen years. I saw the mill stop for dinner: it looked to me like a school let out. I know of another case where the public school money has been handed over to the mill corporation. The mill hires the teachers. They generally have good teachers; but there must be something wrong with a community where all the people are willing to turn over to any person or corporation their right to hire the school teacher.

But what about the excuses that are offered for the employment of children in these communities? Good streets, good houses, electric lights, schoolhouses, churches, and so on—these are the excuses, and the mere fact that these excuses are made shows that we have not the proper conception of things. In the first place, these things are good business. It is just as good business to build good houses for people to live in as it is to build good stables to keep mules in, and a business man knows it. In the second place, it ought forever to be understood in America that when a man builds a mill or opens a mine with the object of gathering a large number of people to work for him, he is under solemn obligations to build good houses and to furnish light and drinking water and everything that makes for good community life. That is not charity. It is a matter of right, and no such right ought to be bought at the price of the welfare of our children.

This whole matter of working young children is a direct challenge to Americanism. Think about it. The last country in the world, this new land; a new race, strong with the strength of all of us; new discoveries, science unlocks her secrets; the earth teems with fruit; wonderful times; progressive people; successful people making so much money that they can not count it. What has happened? You take your coal in Pennsylvania and send it over the railroads into my state to fire our engines. Every time they fire a new engine in our textile mills they call for more children to work. The rivers in my state are harnessed. We take power from the river on a wire and send it across the state and build a new mill. And when we

build the mill and start it running, we have more children at work than before. Is it right? Is it honest? If so, why not put all of them to work? There can not be much difference in childhood. If it is not right, this nation should end it. If it is not profitable, this nation should end it. If it is not good for community life, this nation should end it. If it is hurtful to the social structure, this nation should end it. In other words, the time has come in this country when the nation, because of the knowledge that these things are not going to be done by the states, should, as the protector and guardian of every child within her borders, say to the man seeking to make profit out of a child as an excuse to beat down the wages of his parent, "Thou shalt not rob the child of his childhood."

PRECEDENTS FOR FEDERAL CHILD LABOR LEGISLATION

THOMAS I. PARKINSON
Legislative Drafting Bureau, Columbia University, New York City

Practically all novel legislation of any importance proposed in this country must run the gauntlet of two difficult tests. The first of these is desirability, and the second constitutionality. To the legislator the question of desirability is of prime importance. On this question his discretion is absolute, his decision final. On questions of constitutionality not the legislature but the court is the final arbiter. The legislature, however, as a coordinate branch of government should give consideration to the constitutionality of pending bills and should so plan and frame them as to minimise constitutional difficulties. The legislature should never refuse to enact a law otherwise desirable merely because there exists a doubt as to its constitutionality. Such doubts should be resolved in favor of the measure rather than against it. It is only when convinced beyond doubt that the measure is *unconstitutional* that the legislature should refuse to go through the forms of enacting it.

The desirability of proposed federal legislation depends on many considerations of social, economic, and administrative policy, of political exigency, and of the comparative advantages of federal

versus state regulation. The intelligent and wise determination of these questions as well as of the constitutionality of proposed legislation will always be furthered by a careful consideration of any relevant precedents. Unfortunately, on many phases of the desirability of federal child labor legislation little help can be derived from precedent. This is especially true of the question of federal versus state regulation and of the problems of enforcement. However, this paper deals only incidentally with the precedents affecting questions of desirability; it is primarily concerned with the precedents respecting the constitutional power of the federal government to regulate child labor in the manner proposed.

Constitutionality of statutes is a favorite subject of discussion in this country. The average citizen interested in public affairs, whether lawyer or layman, is always attentive to constitutional questions and ever ready to discuss them on any sort of occasion from social conversation to legislative debate or judicial argument. It is distinctly an American problem and perhaps enthusiasm for the home product has something to do with our interest in it. Not only uninformed lawyers, but many an innocent layman has a ready opinion on important constitutional problems, and he who has no opinion of his own to express is usually a willing victim to him who has. Perhaps this accounts for the tendency of proponents and opponents of novel legislation, both in the propaganda preceding its introduction and in the discussion attending its passage, to give undue consideration to its constitutionality as compared with its desirability.

The willingness of lawyer and layman alike to express with confidence hastily formed opinions on constitutional questions has been encouraged by the mistaken notion that recent decisions of our courts of last resort have established such doctrines as (1) that which is reasonable is constitutional; (2) that which is very much desired by the preponderant opinion of the people is or will be made by judicial construction consistent with constitutional provisions; (3) that those powers which the individual states cannot exercise effectively must necessarily have been entrusted to the federal government. There are other and perhaps more dangerous notions of constitutional law particularly popular at the present time because of the ease with which they may be handled by the non-professional enthusiast either for progress or for conservatism. The

basis for many of these notions is to be found in the general language with which our judges sometimes seek to adorn the essay otherwise known as the opinion which goes along with the court's decision. For example, in the Oklahoma bank case the Supreme Court of the United States upheld state legislation requiring banks to contribute to a guarantee fund to prevent loss to the depositors of an insolvent bank. That is what the Court decided and for that alone the case is a precedent. But the learned judge who wrote the Court's opinion inserted language to explain and enforce his thought which has been hailed as authorising unlimited governmental action by both state and nation, provided only a large number of people very much desire it. Not this language, however, but the actual decision of the Court on the facts and the statute before it will determine the importance of the case as a precedent on future questions of constitutional law. This is equally true of the White Slave and other opinions of the Supreme Court in cases involving the interpretation of the commerce clause. They are full of general language explanatory of the decisions, quotations from which, like quotations from the Bible, can be made to justify or damn any proposition to suit the purpose of the commentator.

In attempting to forecast the attitude of the Supreme Court on the question of the constitutionality of legislation like that now proposed to exclude the products of child labor from the channels of interstate commerce, there is only one safe course to pursue. That is to examine the action of the Court on previous similar legislation, and if it be found, after such examination, that the proposed legislation is not clearly unconstitutional, to seek its passage if it be otherwise desirable and thereby secure its submission to that Court for final decision.

The federal government is still one of limited powers. Powers not actually granted to it are retained by the states notwithstanding the states may be incapable of effectively exercising them. It is not true that merely because a power can not be economically or effectively exercised by the states it must, therefore, have been granted to the federal government, though it may be true that the Court in interpreting the extent of a power granted may give weight to the fact that it can be more economically or effectively exercised by the federal than by the state government. There is no worse confusion in constitutional law than that which results in mixing

up what the Constitution now provides, with what such a Constitution ought to provide.

Like the state police power, the full scope of the federal commerce power is as yet undecided. The line which separates the constitutional from the unconstitutional is a rough one, fixed here and there by definite decisions and tending to become straight only as the definite precedents increase. Despite their unpopularity these precedents—and I use this word in its narrow technical legal meaning—are the only safe guide to the discovery of probable future decisions.

So much for general principles involved in every discussion of the constitutionality and to a lesser degree of the advisability of legislation of this kind. These suggestions are advanced for the guidance not only of the proponents but also of the opponents of the present proposal. Their support or objection to carry weight must be founded upon the precedents.

The precedents affecting the constitutionality, and in some measure the desirability of the proposed exclusion from interstate commerce, of the products of child labor or of child labor plants are few and may be readily stated. Each of us is free to draw from them his own conclusions as to their effect. I shall assemble them under a few headings which suggest the argument against the constitutionality of the proposed legislation and briefly indicate my own interpretation.

1. Does the federal power to regulate commerce authorise the exclusion from interstate commerce, *i. e.*, the prohibition of shipment or transportation in interstate commerce, of articles produced by labor of children under a specified age or in an establishment where such children are employed?
2. Does the regulation of child labor by federal law constitute an unconstitutional and unprecedented extension of the federal power to matters of local concern properly belonging to the states?

The question resolves itself into this: Can Congress, under the commerce power, prohibit the shipment or transportation in interstate commerce of goods produced under circumstances which Congress believes detrimental to the public health, safety, morals, or welfare?

The precedents may be assembled as follows:

A. Decisions of the Supreme Court of the United States and their effect

The decisions of the United States Supreme Court establish the principle that Congress possesses broad affirmative power to regulate interstate commerce, restricted only by other provisions of the federal constitution. Without stopping for the moment to consider these other provisions and their effect, the Court has established the power to prohibit shipments or transportation in interstate commerce in the following cases:

1. Articles involving danger to the means of transportation or to other articles or persons being transported: Prohibitions of the shipment of nitro-glycerine and other explosive and combustible materials have been upheld.
2. Articles the transportation of which might spread to the users disease or immoral tendencies detrimental to the public welfare: Prohibitions of the shipment of diseased cattle, adulterated or misbranded food and drugs, intoxicating liquors, lottery tickets and advertising matter relating to lotteries, obscene literature and articles designed for immoral and indecent use, have been upheld.
3. Articles the transportation of which involves unfair competition or practices inconsistent with public morality and welfare: Prohibitions of shipment or transportation of commodities in which the carrier has a legal interest, or of women for immoral purposes, have been upheld.

In addition to these instances, drawn from the regulation by Congress of interstate commerce, there are several well-known instances of prohibition under regulations of foreign commerce. The Supreme Court has frequently sustained embargo and non-intercourse laws barring importations; for example, acts establishing quarantine to prevent the introduction of contagious diseases into this country or their spread from state to state; and an act prohibiting the importation of inferior grades of teas. Without entering into a detailed consideration of the relation of the power over foreign commerce to the power over interstate commerce, it is sufficient to

repeat the words of Mr. Justice Bradley, viz.: "It has frequently been laid down by this Court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."

Recent congressional legislation with respect to interstate commerce in intoxicating liquors, furnishes another example of what practically amounts to a prohibition of shipment or transportation in interstate commerce. The Wilson Act of 1890, subjecting interstate shipments of liquor to state police regulation on their arrival within the state, has been upheld by the Supreme Court. The power of Congress to subject an article of commerce to state laws which practically prohibit its transportation into the state, necessarily implies a power in Congress directly to prohibit such transportation.

Without exception, the cases interpreting the commerce clause of the Constitution have supported the proposition that the power to regulate commerce includes the power to prohibit. The commerce power, however, like all other powers of Congress under the Constitution, is subject to the provision of the Fifth Amendment providing that no act of the federal government shall deprive any person of property without due process of law. Therefore, though Congress possesses the power to prohibit shipment or transportation that power can be exercised not at the absolute and unrestricted discretion of Congress, but only in those cases where its exercise does not involve a deprivation of property without due process.

The requirement of due process probably controls the exercise by Congress of the commerce power to the extent that an arbitrary exclusion of specified property from interstate commerce, where no conceivable interest of public health, morals, safety, or welfare was involved in such commerce, would be held unconstitutional as a deprivation of property. On the other hand, the due process requirement in so far as it controls state action has always been held to permit such reasonable restrictions on the use of property or such prohibition of its use as may be required to protect the public health, safety, morals, or welfare. It is hard to draw a definite line. On the one hand, Congress may prohibit the shipment of some articles in interstate commerce and, on the other, Congress may not exercise this power arbitrarily to deprive any person of his property or the use of his property without due process.

In the constantly recurring conflict between due process on the

one hand and the police power on the other, a few points have become definitely settled and one of these is that state legislation forbidding the employment of child labor is a constitutional exercise of the state's power to provide for the public welfare at the expense of private property. The power thus to affect or control private property in the interest of the public welfare is known as the police power. It has been definitely determined by the Supreme Court of the United States that in the exercise of its broad power over interstate commerce, Congress possesses a similar police power. It was this police power which justified the prohibition of interstate transportation of lottery tickets and lottery literature; it was the congressional police power which justified the prohibition of the interstate White Slave traffic. As has been said, it is impossible to mark definitely the limit of the congressional police power over the field of interstate commerce, but undoubtedly the congressional power will not be held to be more restricted by the due process clause in the Fifth Amendment than is the power of the states by the similar due process clause in the Fourteenth Amendment. Since the suppression of child labor has been everywhere upheld as a valid exercise of the state police power notwithstanding the due process clause of the Fourteenth Amendment, it follows beyond doubt that the congressional police power over interstate commerce may be constitutionally exercised to suppress child labor by excluding its products from the channels of interstate commerce notwithstanding the due process clause of the Fifth Amendment. In other words, the limiting effect of the due process clause of the Fifth Amendment on the commerce power of Congress will not prevent the prohibition by Congress of any interstate commerce which involves detriment to the public health, morals, safety or welfare.

If Congress declares that child labor is contrary to public health, public morals, or public welfare, and that the continuance of child labor is encouraged by affording to the employers of such labor the facilities of interstate commerce for the distribution of their product, the courts, if they follow the precedents referred to, will support legislation by Congress withdrawing from such employers the facilities of interstate commerce and to that extent suppressing conditions contrary to the public health and welfare.

It will probably be suggested that there is a distinction between the exercise of the congressional police power in the regulation of

interstate commerce in cases like the lottery, White Slave, pure food and similar legislation, and in case of the suggested child labor legislation. This distinction is based on the idea that the legislation in the former operated to protect the consumer or person affected after the transportation was accomplished, whereas in the child labor case it operates, if at all, to affect the producer. This distinction has been developed by academic discussion and finds no support in the language of the opinions of the Supreme Court. The decisions support the power to prohibit transportation in interstate commerce for the purpose of protecting the public health, morals, and welfare, and the language of the latest decision upholding this power, viz.: "It may be that Congress could not prohibit the manufacture of the article in a state, it may be that Congress could not prohibit in all of its conditions, its sale within a state; but Congress may prohibit its transportation between the states and by that means defeat the motive and evil of the manufacture," gives no hint of a distinction between legislation protecting the public health or morals before and after transportation. Congress may prohibit, says the Court, "its transportation between states and by that means defeat *the motive and evils of the manufacture.*"

Without laying too much emphasis on this general language, it is evident that the Supreme Court is drawing no fine-spun distinction in the application of the doctrine that Congress may prohibit interstate transportation where such prohibition bears some reasonable relation to the public health, morals or welfare. The Court has upheld prohibitions which protect the consuming public from diseased or impure foods; it has upheld prohibitions which tend to prevent unfair competition between shippers; it has upheld prohibitions which tend to prevent the spread of gambling in lotteries; it has upheld prohibitions intended effectively to suppress the White Slave traffic; and it has upheld what practically amounts to a prohibition of interstate commerce in intoxicating liquors.

In view of these precedents can there by any doubt as to the answer which the Supreme Court will give to the question which Mr. Brinton submitted to a congressional committee, viz.: "May Congress look forward to the effect of such articles upon the consumer for whose benefit they are produced, but not look backward to the effect of their manufacture upon the worker and the industry by which they are made?"

B. Acts of Congress not yet passed upon by the Supreme Court

In addition to the foregoing precedents derived from decisions of the Supreme Court of the United States, there are a number of congressional precedents contained in acts of Congress recently enacted, but not yet passed upon by the Supreme Court. All of these indicate that Congress believes that it has the constitutional power and that it is desirable to pass laws for the protection of the public health, morals, safety, and welfare by prohibiting importation or interstate shipment despite the fact that these laws incidentally result in the regulation of affairs heretofore considered local and of state concern.

1. Prohibition of imports: Congress has recently prohibited the importation of convict-made goods and of moving picture films bearing false notice of copyright.

2. Prohibition of shipment or transportation in interstate commerce:

Insecticides. Shipment or transportation in interstate commerce prohibited by Act of Congress of 1910, following closely the Food and Drugs Act.

Nursery Stock. Shipment or transportation in interstate commerce prohibited by Act of 1912.

Game. Transportation or shipment in interstate commerce of game killed in violation of state laws prohibited by §242 of the Criminal Code of the United States.

Virus, Serum, etc. Shipment of "worthless, contaminated, dangerous or harmful virus, serum, etc." prohibited by Act of 1913.

In view of the decisions and their interpretation by Congress in the enactment of these prohibitory acts, Congress is not likely to anticipate unfavorably the action by the Supreme Court and on the basis of unconstitutionality refuse to prohibit shipment or transportation in interstate commerce of goods manufactured under circumstances which Congress believes to be detrimental to public welfare, or the public health, or the public morals.

With respect to the objection based on a combination of constitutional, administrative, and other questions of desirability, viz., that the proposed child labor legislation is an invasion of the field of government retained by the states, we have not only the foregoing precedents, but other interesting extensions by Congress of its regulation of local matters through the use of the federal taxing power. The most important examples are:

1. The tax on oleomargarine: By this tax Congress discouraged the manufacture and sale in interstate commerce of oleomargarine as a substitute for butter. The actual effect was to benefit the farmers and dairies producing butter in their competition with the manufacturers of the cheaper product.

2. The tax on white phosphorous matches: The effect of this tax was to destroy the industry of manufacturing poisonous matches. It was really police legislation forbidding the use in an industry of materials dangerous to persons employed. It is a clear instance of action by Congress based on the taxing power to accomplish what would otherwise have required state police legislation regulating the conduct within the state of the match manufacturing industry.

3. Tax on cotton future contracts prohibited: In a recent act passed by this Congress contracts for the sale and future delivery of cotton were in effect regulated by the imposition of a prohibitive tax on those contracts which did not conform to a standard deemed desirable.

4. Tax on dealers in opium: The tax imposed by Congress in the Act, approved December 17, 1914, on dealers in opium is so small as to make it obvious that it is really a regulation of the business.

In view of these precedents for the exercise of the federal taxing power for the purpose indirectly of regulating business or conditions which have heretofore been considered outside of the power of Congress, little weight should be attached to the argument that extension of the federal power such as that proposed in child labor legislation is unconstitutional or otherwise undesirable because of its invasion of the field of state activities. Certainly it can not be said that the proposed legislation is without precedent. If Mr. Underwood's language in the debate on the cotton futures act is an indication of the attitude of the Democratic party on the question of extending the federal power, indirectly if necessary, where the purpose to be accomplished is one earnestly desired, little concern should be experienced by the proponents of this measure on this score. Mr. Underwood said:

"* * * you may apply to that bill the taxing power to enforce the law, or the power of the use of the mail—the post-office power—to enforce the law. My contention is that the particular power that you use with which to enforce the law is a secondary proposition. But if you want to use the most effective power to enforce any law, there is no greater power in this Government than the

power to tax. (Applause). It is the most effective power that you can use to enforce any legislation. So I think that answers any objection to the mere use of a power to enforce the law."

These remarks indicate that Mr. Underwood at least is not worrying much about the danger of opening the door to unlimited extension of federal regulation in matters heretofore considered of local concern.

A final word to those who hesitate to support the proposed bill because of a view that it will be declared unconstitutional. No one knows what are the limits of the power of Congress over interstate commerce.

The Supreme Court of the United States has from time to time extended the limits of that power beyond preconceived ideas of its limitations. If this legislation is desirable, certainly it ought not to be held up by Congress merely because of the *possibility* of its being held unconstitutional. No one can say that *it is* unconstitutional. If the mere fear of its unconstitutionality were to prevent the passage of legislation by Congress there would be no development of our constitutional law. Who could have said prior to the lottery cases that the policy of the lottery legislation would be upheld by the Supreme Court of the United States? Who could have said prior to the Hoke Case that the White Slave legislation would be held constitutional? Yet, if these acts had not been passed merely because there was a possibility that they would be held unconstitutional individual states might still pass drastic laws and yet be helpless to prevent the flourishing of lotteries and the White Slave trade.

Following these addresses DR. LINDSAY presented the following resolution which was seconded and unanimously carried.

> RESOLVED: That the National Child Labor Committee, in Eleventh Annual Conference assembled, express its hearty thanks to the good people of Washington and vicinity for numerous courtesies extended; to the New Willard Hotel management for the use of its auditoriums; to the owners of stores and the managers of electric and gas companies for the free service rendered for the display of the exhibit; to the speakers from all sections of the country for the papers presented and discussions participated in; to the newspapers of Washington, and the newspaper correspondents and press associations for the space given in carrying reports of the Conference; and to all who have contributed by their presence and interest to the success of our meeting.

The Conference then adjourned.

Have You Gained a New Member

FOR THE

National Child Labor Committee?

If not, consider what a new member means and see if you can't use the membership blank below before the week is out.

WHAT A NEW MEMBER MEANS

I

Win a friend and you win his friends.

A new member means not *one* but *many* new champions for the children.

II

A single thread in the Mount Washington cable would snap were it to attempt to lift the car alone.

But the 8,700 people banded together in the National Child Labor Committee have gained many laws the several millions of people not so organised had hoped in vain to win.

III

Every added member means a little greater efficiency in the work of the Committee.

Does a small subscription help? Last year, $25,000 were contributed in small sums—all under $5.

IV

Don't you know someone who has not yet found the happiness of trying to make the world better?

Here is your opportunity. Win a new friend for the children and a member for the National Child Labor Committee.

To V. EVERIT MACY, Treasurer,
National Child Labor Committee,
105 East 22d Street, New York.

I enclose $ for the help of children at work in tenement sweatshops, coal breakers and coal mines, cotton mills and glass factories.

Enroll me in your membership with the understanding that one dollar of the above applies as a subscription (at member's rate) to the CHILD LABOR BULLETIN.

Signed.....

Address.....

ANNUAL MEMBERSHIP ENROLLMENT

Associate—Persons contributing		**$2 or more**	
Contributing	" "	**$5**	" "
Sustaining	" "	**$25**	" "
Donor	" "	**$100**	" "

PART TWO

of the

ELEVENTH ANNUAL CONFERENCE

will be held at

SAN FRANCISCO, CALIFORNIA

MAY 28-31, 1915

The same general topic will be discussed:

CHILD LABOR A NATIONAL PROBLEM.

Individual sessions will be devoted to

The Case against Child Labor,
Federal Control of Child Labor,
Child Labor in the West,
A Charter for Childhood.

The Proceedings of Part Two will be published in the CHILD LABOR BULLETIN for August, 1915, and may be obtained for Fifty Cents a copy.

National Child Labor Committee
INCORPORATED
105 EAST 22D STREET, NEW YORK CITY

National Child Labor Committee

INCORPORATED

ORGANIZED APRIL 15, 1904

105 East 22d Street . . . New York City
204 Bond Building . . . Washington, D. C.

OFFICERS

FELIX ADLER, Chairman
SAMUEL McCUNE LINDSAY, HOMER FOLKS, Vice Chairmen
V. EVERIT MACY, Treasurer
OWEN R. LOVEJOY, General Secretary
A. J. McKELWAY, Secretary for the Southern States
EDWARD N. CLOPPER, Secretary for the Northern States
JOSEPHINE J. ROCHESTER, Manufacturing Secretary

BOARD OF TRUSTEES

FELIX ADLER, Chairman
JANE ADDAMS
FRANCIS G. CAFFEY
HOWELL CHENEY
EDWARD T. DEVINE
HOMER FOLKS
WILLIAM E. HARMON
FLORENCE KELLEY
ADOLPH LEWISOHN
SAMUEL McCUNE LINDSAY
V. EVERIT MACY
CHARLES P. NEILL
ISAAC N. SELIGMAN
LILLIAN D. WALD
STEPHEN S. WISE
JOHN W. WOOD

OBJECTS

To promote the welfare of society with respect to the employment of children in gainful occupations.

To investigate and report the facts concerning child labor.

To raise the standard of public opinion and (parental) responsibility with respect to the employment of children.

To assist in protecting children by suitable legislation against premature or otherwise injurious employment, and also to aid in securing for them an opportunity for elementary education and physical development sufficient for the demands of citizenship and the requirements of industrial efficiency.

To aid in promoting the enforcement of laws relating to child labor.

To coordinate, unify, and supplement the work of state or local child labor committees, and encourage the formation of such committees where they do not exist.

AUG 21

The

Child Labor Bulletin

Volume Four
Number Two

AUGUST, 1915

Issued Quarterly
Price 50 per Year

PROCEEDINGS

OF THE

ELEVENTH ANNUAL CONFERENCE

(PART II)

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22d STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1913, at the Post-office at New York, N. Y., under the Act of August 24, 1912

THIS NUMBER, FIFTY CENTS

The Child Labor Bulletin

Volume Four
Number Two

AUGUST, 1915

Issued Quarterly
Price $2 per Year

PROCEEDINGS OF ELEVENTH ANNUAL CONFERENCE ON CHILD LABOR (PART II)

At San Francisco, Cal., May 28th, 29th, and 31st, 1915

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

1915

COPYRIGHT 1915
BY THE
NATIONAL CHILD LABOR
COMMITTEE

PRESS OF CLARENCE S. NATHAN, INC., NEW YORK.

CONTENTS

		PAGE
I.	MASS MEETING	89
II.	THE CHILD LABOR MOVEMENT	91
	ANNUAL ADDRESS OF CHAIRMAN.....*Dr. Felix Adler*	92
	SOCIAL RESPONSIBILITY FOR CHILD LABOR. *Bishop Edwin H. Hughes*	97
	ENFORCEMENT IN WISCONSIN.....*Hon. James D. Beck*	100
III.	FEDERAL CONTROL OF CHILD LABOR	105
	RESPONSIBILITY OF THE FEDERAL GOVERNMENT. *Mrs. Florence Kelley*	107
IV.	CHILD LABOR IN THE WEST	111
	CALIFORNIA CHILD LABOR PROBLEMS.....*Lewis W. Hine*	114
V.	A CHARTER FOR CHILDHOOD	117
	NEW IDEALS IN THE SCHOOLS.....*Dr. Jessica B. Peixotto*	118
	THE RIGHT TO PLAY.....*E. D. DeGroot*	122
	THE SEVEN SINS OF CHILD LABOR.....*Dr. Felix Adler*	126

First Session: Mass Meeting on Exposition Grounds

Dr. Felix Adler, Chairman of the National Child Labor Committee, Presiding

---

The second part of the eleventh annual conference on child labor opened on Friday afternoon, May 28, 1915, with an outdoor meeting on the grounds of the Panama-Pacific International Exposition at San Francisco. The conference was welcomed by MR. CALVIN B. BROWN, representing the President of the Exposition, by MR. EDWARD RANNEY, speaking for the mayor of San Francisco, and by MR. F. J. O'BRIEN on behalf of the Governor. After the response by DR. ADLER addresses were delivered by PAUL SCHARRENBERG, Secretary of the California State Federation of Labor, by EDWIN MARKHAM, and by MRS. FLORENCE KELLEY.

MRS. KELLEY spoke on the consumer and child labor and said in part:

"To citizens of California it may well seem strange that we bring an annual conference of the National Child Labor Committee to this fortunate state. We are obliged to come begging for help because not one of us can have a clear conscience while we leave the protection of working children to the individual states. The states shirk their duty. Each feels sure that its particular industry is wholesome for children. As some Californians tell us that the canning industry in California differs from that of other states and benefits children, so people in North Carolina say that nothing improves mountain children like being brought from the mountains and taught in mill villages what they might never learn in their illiterate native haunts.

"In Texas in the largest cotton field the sun shines on, white children and black children, four, five and six years old, begin in August to pick cotton. In Texas, some people told me how fine it is for tenant farmers that their children, when school is not keeping, can do the light work of picking cotton that grows nearest the ground on the bush where, if grown people stooped

to pick it, they would be extra liable to sunstroke or apoplexy. It seems to them fortunate that low-growing cotton and little children fit so well. But children who work in that great Texas cotton field listen while they pick to the conversation of grown people with whom they work. And many of those grown people, men and women, black and white, wear a chain and ball, for they are rented out by the State of Texas from the stockades to the cotton planters. And as people in San Francisco talk of this Exposition, so they who wear chains and balls talk of things that interest them, of offenses that brought them to the stockades, and of what they will do to get even when they are free. To that our little brothers and sisters listen while they pick the cotton that we wear.

"Wherever there is a cotton field there are children working in it for us. We cannot wear cotton goods and keep a clear conscience. And if we wait for the people in states where cotton grows to feel differently about the outdoor labor of children, for people in California to feel differently about canneries,—while we wait, generations of young children will lose the blessing of a stainless childhood. We are their ultimate employers, we who consume the goods. We can acquire a clear conscience only as we act as a nation, only as these states of the enlightened West join with us of the belated East, and with those whose eyes are opened in the belated South, to stop through Congress the work of children in mills, and mines, and quarries, in workshops, sweatshops, and canneries. As we raise the standard of production of all things which enter interstate commerce, as we make Congress which protects our industries protect our children too,—so only can we protect our consciences."

The meeting closed with a pageant written by Mrs. Stella G. S. Perry and presented under her personal direction.

Second Session: The Child Labor Movement

Dr. Felix Adler, Presiding

Further greetings were extended to the conference by MRS. E. L. BALDWIN and MRS. GEORGE H. IRVING on behalf of the San Francisco Child Labor Committee and the Juvenile Protective Association. DR. PHILIP KING BROWN, of San Francisco, then spoke on the physician and child labor. "It is our function in the medical world not to wait until disease has overcome these children but to cooperate with you to the best of our ability in the effort to make the community understand that prevention saves life and saves money. We must conserve the strength of the child; we must as a community extend our care of the family to make possible the attainment of a higher standard of health. By protecting the children we may come to a time when there will no longer be the problem of weakened constitutions and social disease."

MR. ALVIN B. POPE, Director of Social Economy and Education at the Exposition, said in part: "Every great exposition has one lesson that is spread throughout the world. The Chicago Exposition was followed by reforms in beautifying our cities; the Saint Louis Exposition was followed by changes in the beautifying of homes; and we hope this Exposition will be followed by a change in the beautifying of human bodies among the American people, and the lessons in social economy will so spread throughout the country that their effects on the habits of the people will be noticed for fifty years to come." Mr. Pope told how he had been awakened to an interest in the child labor problem by his experiences in a country where there were no factories and no industries that were not agricultural.

MR. WILEY H. SWIFT, of Greensboro, N. C., reported on the struggle in the South. He begged his audience to remember that "we are not separate states any more; we are a great country. We are all neighbors and your children here are the same as our children there." He closed his address with an urgent plea for a federal child labor law.

Other addresses were delivered by DR. FELIX ADLER, BISHOP HUGHES, of San Francisco, and the HON. JAMES D. BECK, of the Wisconsin Industrial Commission.

ANNUAL ADDRESS OF CHAIRMAN

DR. FELIX ADLER

The principal point to which I shall call your attention is the aspect of the national child labor movement as intended to contribute to the spiritual awakening and conversion of the American people.

My interest in this problem began in 1872. It was then that for the first time I read with a beating heart and with horror the chapter in Marx's Kapital in which he culls from English bluebooks the facts with regard to the maltreatment of little children in England in the early part of the last century. I remember that there were particularly two matters that impressed me: the fact that the orphanages were emptied in order to feed child labor to the machines in the mills, and that in the barracks where the child workers were housed the little beds never grew cold.

There was especially one picture that stayed with me; I recalled it as Mr. Lovejoy yesterday told of his experience in the early morning. It was the picture of a man waking up a little boy of eight years at four o'clock in the morning to take him to his work. The season was winter, it snowed hard outside, and it was only with the greatest difficulty that the father succeeded in rousing the little fellow. The child was so drowsy that he almost fell asleep as they were walking; finally the father took him on his back and carried him to the brickyard where he was to stay at work all day long. This picture, of a father carrying the drowsy boy on his shoulder in the cold winter morning and then leaving him in the brickyard to work all day, has remained with me as an ineffaceable ugly blot on the memory. It is now forty-three years since I read the extracts from those bluebooks, and when, eleven years ago, the Rev. Edgar Gardner Murphy proposed the formation of a National Child Labor Committee and urged me to take part in it, it was this picture that rose up before my mind and helped to determine my wavering resolution.

Now, the question is sometimes asked, "Why have a national committee, why not state committees and then let

these cooperate?" To this one sufficient answer is that we wish to forestall the appearance of child labor in those states in which there is as yet little or no manufacturing, and a national committee is needed to this end. We wish with anti-child-labor laws to preempt the ground, before a greedy industrialism can stretch forth its hands to grasp the child. We wish to defeat if we can the law of periodicity, the law of recurrence, that has hitherto obtained in this matter of child labor. England began, Massachusetts, Pennsylvania, New York followed suit. The same inconceivable outrages on human feeling repeat themselves again and again; whenever a predominantly agricultural community develops into an industrial stage the horrors exposed by Lord Shaftesbury tend to recur. Mankind does not readily learn by experience, the warning lessons of the past are often writ in water. Thus the industrial states of the North simply stepped into the foul footsteps of early English capitalism, and the South, as soon as it became industrial, hastened to rehearse the same doleful story. We wanted, looking toward these great states of the Pacific and the West still mainly in the pre-industrial stage, to thwart that horrible law and make it impossible that the same conditions should there grow up. This is the one main object which as a national committee we have had in view.

But I have said that I intended to speak to-day of a certain aspect of the child labor movement that is not always made prominent, though it is doubtless present in the minds of many who are working and cooperating with us in the movement. I am to speak of the spiritual conversion of the American people to which it is the purpose of this child labor movement to contribute. And in order to make plain what I mean I ask you to face, if you will, and to face unflinchingly this question: Why is it that just in America, just in a democracy, the child is misused? Why is it that the freest countries—for England, even at the beginning of the last century was far more emancipated politically and far more liberal than the countries of the continent—why is it that, beginning with England and passing on to America, the very countries in which political freedom is most advanced are conspicuous for their mistreatment of human life? Do you say that it is the Kaiser who sends

his people to the battlefield, and shows no regard for individual welfare? Why then do we not show regard for the individual welfare of the child laborer? Germany at least does not allow little children to go to work prematurely. In Germany elementary education is compulsory, and they have there a wonderful system of continuation and trade schools far in advance of ours. Why is it that a monarchy—I am no monarchist, I do not love the imperial system, I am a devout American—why is it, I ask that we in this republic have made so bad a showing. Child labor is not a universal disease, at least not in the same degree that it exists here. There is something wrong with us.

There is something of which this child labor is but the significant symptom, and if we study that symptom we may discover that there is a deep flaw in our national life which needs to be exposed if it is to be corrected. I am not here to-day merely to repeat the elementary arguments against putting the iron heel on the little life; it is pitiful enough that we should have to make these appeals. I ask your attention, as thoughtful persons, as leaders in the social movement, to the consideration of what child labor as a symptom means, what the disease is in America.

The chief end of life in America—I am now speaking, not of the official creed, not of that of which our lips make profession, but of the creed which may be read off from the conduct of men—is . . . . what is it? Is it money-making? That is rather a crude description of it. I should say that from the point of view of a large part of the American people the chief end of life is to achieve the sense of power that comes to a man in the process of money-making, in the creation of wealth, in the accumulation of a large fortune. Americans are not materialistic in the sense in which ancient Capua was a materialistic city, a city sunk in luxury and the base pleasures of the senses. We are far from being a sensual people or a materialistic people in the sense that the enjoyments of life which wealth commands are our primary object. No, it is the sense of the power put forth in the accumulation of wealth, in the creation of it, that we cherish most. We do not enjoy the means at our command approximately as much as the French bourgeois enjoy their modest incomes. There is among them a far more general

tasting of life's pleasures than with us. We are power-seekers, not pleasure-seekers, and we live to effectuate personality in putting forth power. It is for instance the power that has gone into these Exposition buildings, in which your people delight. It is never so much the thing itself that enchains our interest, as the energy that goes into the making of the thing. We are all steam engines, and delight in working under full head.

In Germany the chief end of life is honor derived from efficiency in the task. In America it is the effectuation of personality in terms of power. Now power, unfortunately, in this country, because it is a new country and the resources of nature invite us on every hand, has run preponderantly into the narrow channel of wealth production. It is this one kind of power that is the dominating object of desire, and as wealth is coined into money it may briefly be said, bearing in mind the above explanation, that the real end of life for a large number of Americans is money-making. And it is this that explains how it is possible that in a republic in which every human being is supposed to count for one and no one for more than one, in a land in which every human being is supposed to possess precious, inalienable rights, one million seven hundred thousand children were found to be at work when the Census of 1900 was published. It is because the end of life is held to be money-making that the young child can not too soon be induced or forced to dedicate himself to the chief end of life. If he can only make a bare pittance by his labor he has yet taken the first step toward the great goal, he has placed his little feet on the first round of the ladder which he is expected to climb. This is the sad delusion, the evil spell that explains the existence of child labor in the United States.

Those who are what is called orthodox in religion commonly insist on teaching young children the very difficult philosophical conceptions contained in the catechism, on the ground that the young should be made acquainted at the earliest date possible with the chief end of life. Well, there is an orthodoxy of the market, as well as of the churches, and according to the orthodoxy of the market the chief end of life is not to glorify God but to make money. It is to this that the grown man devotes his abilities; it is into this restricted channel that his

vitality flows. He fails to conceive of any other kind of power except the power that is manifest in the production of wealth, and therefore he thinks it no hardship that the young child should early be led or coerced into this same direction.

Of course the men of power are mistaken. They achieve one kind of power; there are other kinds finer and better worth while, which they forfeit. True, men of the kind I am describing can build art museums, but they can hardly appreciate in the best sense the art that is housed in their museums, because a genuine appreciation of art presupposes a tranquil mind, and the mind of the mere wealth-getter is like the unquiet sea, forever restless. The informing spirit of art is a spirit of moderation and restraint; the spirit of the wealth-getter is immoderate and unrestrained. Again, men of this type may found universities and promote science, but they can not really appreciate science because the essential mark of science is its disinterestedness, and the mere wealth-getter is the reverse of disinterested. He can not even practise the purest philanthropy though he pour out his millions, for the reason that philanthropy is not so much after all a matter of money as of loving and self-abnegating service to others, of which the poorest and humblest social worker in the slums is more likely to be capable than the millionaire philanthropist.

So I say he is mistaken—the great 'self-made' man who asks "Why should not children work? Look at me," he says, "I began to work when I was eleven or twelve years old, and am I any the worse for it? Have I not made of my life a great success?" The usual answer to this is, "But you were an exception to the rule; you survived the ordeal to which others would succumb!" But there is a further answer, and it takes the form of a question: Are you really none the worse for the hard and hardening experience through which you have passed? Has it ever occurred to you that the sort of success and power you have achieved may have been purchased, perhaps, at the expense of other kinds of success and sweeter and nobler powers which were latent in you and which you have crushed out to such a degree as not even to be aware that you once possessed them or at least the possibility of them? And because you do not comprehend your own condition, therefore you are

now crushing these sweeter and more delicate things in the children! And if we can only make you pause in your hot career, you splendid, pitiful, unsuccessful man of success, and bring you to respect the finer things that are hidden in these children, perhaps you and others like you will have revealed to your wondering eyes the divine possibilities that are latent even in yourselves, and a beginning will have been made of your conversion to a saner, more spiritual view of human existence.

SOCIAL RESPONSIBILITY FOR CHILD LABOR

BISHOP EDWIN H. HUGHES

The term 'social responsibility' is a somewhat vague one which very happily in our own day is working out toward definite meaning. One who has studied the last quarter of a century of our nation's history has discovered that one of the most meaningful and persuasive slogans of our time is the phrase 'social welfare.' We have placed that phrase in competition with the old term 'individual liberty' and more recently with the modern term 'competitive industry' and it has already succeeded in winning some marked victories. It is, however, a comparatively easy thing for us to discount humanity when the pressure of some very great and gentle and tender reform is on our hearts. The sense of social responsibility with reference to child labor has been distinctly blurred by certain things that will be perfectly evident upon a review of the social situation or of our own personal experiences.

I have sufficient faith in human nature to believe that when you can get before the people an issue that is distinct and straight they usually decide for human righteousness. But the evil spirit in the temple of humanity has a rather shrewd way of identifying himself with the man; and his cry is not 'Let him alone,' but 'Let *us* alone.' The Louisiana Lottery advocate pleaded always that out of its proceeds the dykes down around the Gulf had been built. It is characteristic of every evil thing so to justify its existence by identifying itself with our human

interests,—so much so that the threat of its removal seems to be a threat against those interests.

Consequently, if we could really bring before the people the issue of child labor in a straight and unmixed form I have no doubt of the decision they would make. But the issue is blurred, sometimes by the constitutional argument, sometimes by a plea for exceptional cases, sometimes by the argument that work, even in childhood, if properly adapted, tends to the development of character. Those who have defeated the program for child labor reform in America have always imitated the evil spirit in the temple by standing as advocates of various fine interests in our homes, and saying with an effect of seriousness, 'Let us alone.'

In the next place may I point out that if one studies the realm of legislation alone, one is very apt to do great discredit to human nature. The legal is always the last realm to be conquered. Magna Charta is never the root, but always the fruit of a great reform; the emancipation proclamation is not the beginning but the end. The statute book is just about the last thing to be finally influenced by any one of our great reforms. But in this reform, which has been a remarkably interesting one in its history, you read items that are very significant. You read: child labor bill in New Mexico, passed in the house, defeated in the senate; child labor bill in Texas, passed the house, died in the senate; child labor bill even in our National Congress, passed by the House of Representatives, defeated in the Senate. A very singularly hopeful thing, this,—that the different houses that stand closest to the hearts of the people are those that feel the thrill of responsibility. That thrill comes from the people themselves. Some day we are going to teach certain upper houses that there is a difference between conservatism and obstructionism in America. The House of Lords has learned that in the last ten years; and the Senate must likewise learn it if it is to endure.

Conversion in the matter of child labor came when I was on a ship outside the Azores. A little boy, an Italian immigrant, who was being deported because he had tuberculosis, died. That was the only funeral I ever saw at sea. The little body was wrapped in canvas; there was a brief burial service. In a

feeling of sympathetic interest I went afterwards to look at his ticket. There it was with all the particulars: Name; Age, ten years; Occupation, butcher. "Of course," I said, "he was not a butcher; but it was his understanding that when he got to the land of promise, if he advertised himself as having some occupation he would have a better standing." When I arrived in Naples I found little boys of seven and eight on nearly all the shoemakers' benches. I went to Venice, Venice with the winds of liberty all about its Canals and Temples. There I found little girls of six and eight working in glass factories. Then I came back home. Minister as I had been for ten years, I was ignorant of my own country. It came to me as one of the terrible revelations that more than one child in every fifty was a little child standing in the mills and factories. I had not known it; and the average man now does not know it. One million nine hundred and ninety thousand children under working age, having their bodies stunted, and minds dwarfed, and spiritual natures stifled! If the American people had that sad vision before them, they would elect a Congress that would pay more heed to the protection of actual infants than they pay now to the protection of alleged infant industries!

The simple truth is it takes a twenty-mile wind of popular opinion to drive a legislative ship ten miles! I wish that I could get a billboard and swing it across the streets, and remind the stream of humanity on the great thoroughfares that a million and three-quarters of children have been standing in the factories and mills* of the United States. We have no right to go on with that ritual of patriotism which says this is 'the land of the free and home of the brave' as long as we permit these children to be the very 'blossoms of martyrdom.'

The great province of this organisation, which has done such a great work,—we only need to review the history of legislation in the past fifteen years to realise how much it has done,—is to get the information concerning these things plainly set before the people.

Concerning the ethical and religious side of the matter, I will only say that in the last two of the national gatherings

*Agricultal workers 1,432,580; non-agricultural workers, 557,645, including 281,947 manufacturing and mechanical. Thirteenth Census, 1910.

of the particular religious communion with which I am identified, there has been passed without a dissenting vote a hearty resolution in condemnation of all child labor. It is a great thing that the time has come when the sense of social responsibility is so strong that if any man among the eight hundred delegates had any misgivings or any personal interest involved, he did not dare risk his reputation as a man with a social heart by condemning this resolution! And I venture to make the prophecy that if the man who is speaking to you is spared for the natural period of his life he will see the day when any mill manager who dares to hire children under working age will be denied admission into any branch of the Jewish or the Christian Church of America. May God hasten that day!

ENFORCEMENT IN WISCONSIN*

HON. JAMES D. BECK
Member Wisconsin Industrial Commission

I wish I could feel so encouraged over the child labor situation in Wisconsin as to say that we are having hundreds of prosecutions for violations; or to tell you of the army of inspectors continually on the job to prevent violations; or of the fear and trembling which seize an employer every time an inspector gets within a hundred miles of him. I should like to be able to brush the whole question aside by saying "Our employers know what the law is and they obey it." But all this would be as far from the truth as some of the claims I have heard from other states, and I will simply confess that the child labor law is violated in Wisconsin, and so far as present indications are concerned, perhaps it always will be.

Our child labor law contains the usual provisions as to age, hours of labor, night work, physical fitness, prohibited dangerous employments, educational requirements and the like, and until 1913 it contained the usual penalty clause with the usual provisions for enforcement.

* Condensed by Editor.

We began in 1869 with a penalty of $5 to $50 for each violation. This was increased from time to time until in 1911 it was made $10 to $100, and the number of inspectors who were to enforce this and other labor laws was increased to twelve. At least one-half the time of these officers was devoted to inspections for child labor and it took two years for them to cover the state, although, to enforce the ordinary child labor law as it ought to be enforced, the factories and other places of employment should be visited about once a month. This would mean an army of inspectors for Wisconsin at an annual cost mounting to at least a hundred thousand dollars a year.

With our present method inspections for child labor cost the state something like ten thousand dollars a year. Even that amount is sufficient to cause the department to be placed on trial in campaign speeches for its wanton waste of public money. The tax situation and the cry of expense is not peculiar to Wisconsin alone, and unless the students of our social and other governmental problems begin counting the cost of proposed reforms and its proper distribution, the bottom is going to drop out of some of them.

So in drafting our new child labor law, care was taken to provide for a maximum protection to children at a minimum of administrative expense.

The question of securing conviction had been the most troublesome of all as so large a percentage of our employers and most of our judges and 'influential citizens' had passed through the hardships of pioneer days, where the meager income of the father and the desire to secure cheap labor seemed to compel the capitalization of the child. During the twenty-four months preceding July 1, 1910, we had 120 prosecutions for violation of the child labor law. This number probably would have been doubled or even trebled, had it not been almost impossible to secure a conviction before 40 per cent of the judges. Of the 120 cases, 70 paid minimum fines and the remaining 50 were either let off with suspended sentences or were dismissed. In one case the defendant pleaded "guilty," and upon the advice of the judge changed his plea to "not guilty" and the case was dismissed. Some judges criticised the inspectors for being in the business of training children to be loafers. In one case the judge said if he fined the employer

the boys would lose their jobs. In another the judge refused to decide the case "because," he said, "the defendant is an old friend of mine." Inspectors were criticised for prosecuting 'our best citizens.' One employer was prosecuted for employing a boy to operate a steam hammer; the judge dismissed the case saying a steam hammer was not dangerous to life or limb and if the inspector knew anything about machinery he would not have made the arrest.

The practice of calling for jury trials began to grow rapidly, and in my fourteen years' experience in this work I do not recall a single instance where a jury has convicted a violator of the child labor law. During a comparatively short period the state lost 50 cases in one city as a result of jury trials.

The law as it then stood made its violation a crime. The penalty was a fine or imprisonment or both. If the state lost its case it had no right of appeal because the constitution provides that the accused shall not be twice put in jeopardy for the same offense. If the accused, on the other hand, lost his case, he could carry it to the highest court. If the judge failed to do his duty, the legislature had the power of impeachment, but who has ever heard of a judge being impeached for failure to do his duty in a child labor case?

The penalty clause of our law was changed in 1913 from a fine to a forfeiture which made the proceedings in court civil rather than criminal. In all civil actions either side has the right of appeal; and the accused may be brought into court as an adverse witness and made to testify, as is not possible in criminal cases. He can be compelled to bring in his books and other records for the inspection of the court, and if he fails in the truth he is liable for a criminal prosecution for perjury. If the state loses in the lower courts, it can appeal from one to another until the matter is finally settled by the Supreme Court.

Of the 27 prosecutions so far begun under this law, all but one was settled before coming to trial for sums ranging from $10 to $2,000. The single case that is now in court would no doubt have been settled had not the attorney for the defense 'needed the money.'

We find under the present method that if we suspect a violation but are unable to detect it at once, some employee

of the establishment is pretty sure to report it in course of time. About a year ago we felt that a certain restaurant owner was violating the law, but we could not get the evidence. We waited a month, two months, but no evidence came. Finally at the end of six months an employee reported to us and a deputy was sent to check the matter up. The employer protested his innocence but finally said, "Oh, yes, I believe I did work over hours sometimes but that was eight or ten months ago." The deputy told him it made no difference whether it was eight or ten or twenty months ago, he was still liable and would be sued for the maximum forfeiture. When he was told that while the commission does not maintain an army of deputies to watch employers he could rest assured that some employee would report him and the case against him would stand, he dropped into his chair and gasped with supreme disgust, "That's a h—l of a law." He had been used to a system where the inspector was not able to get around oftener than once a year, and if he was caught he could go to court, pay his $10 and costs, and be money ahead.

In criminal actions, judges would never stand for going back and digging up past offenses. They always insisted on arrests immediately following detection and that such detection should be at about the time the crime was committed. Again, in criminal cases the court must be convinced of guilt "beyond a reasonable doubt" while under the forfeiture clause it is a case of "preponderance of evidence."

By another important change, the inspectors have no authority to institute prosecutions in the name of the state; this power is lodged in the industrial commission alone. This insures uniformity in enforcement and no doubt many times protects the law from being brought into disrepute.

In working out this problem we have not relied wholly upon the child labor law itself but have drafted other laws into service. The school census law, the compulsory education and continuation school laws, come in for their full share of credit in the control of child labor. Then there is in Wisconsin a provision by which the industrial commission has authority to appoint special deputies to issue permits where we find judges are not issuing them in accordance with the law. (Such deputies

have been appointed in about one-third of the industrial centers of the state.) The commission may refuse to grant permits to any employer who continually and wilfully violates the child labor law; and it may hold public hearings at which employers, employees, or other persons may be compelled to attend and testify as to violations in order to secure evidence on which to prosecute. The publicity threatened by this provision has a marked influence in securing compliance with law.

The workmen's compensation law has had a most wholesome influence on the child labor problem in Wisconsin. The compensation act does not cover injuries to minors illegally employed in dangerous occupations so that the industrial commission has refused to award damages and employers are unable to insure against such risks. The damages for accident in these cases of illegal employment are whatever juries choose to assess under the common law, and they have been as high as $9,000 for a single accident, or about ten times as much as could be recovered under the compensation act. Employers are becoming thoroughly familiar with this situation, and several bills were introduced (but did not pass) in our recent legislature reducing considerably the list of dangerous employments. The commission is inclined to increase rather than to diminish the list, as we have the power to do under the law.

I do not wish to be understood as claiming we have the only system of handling this problem. We have tried various schemes and the present one is giving better results than any thus far tried. Nor am I recommending it to other states; some of them may have laws better suited to their conditions. Our law gives the administrative officers tremendous powers; to lodge such powers in departments which are made the object of political spoils would no doubt in most cases prove disastrous.

Laws should be administered in accordance with a definite, fixed, and even policy. This can be attained by long and continued experience; to secure such experience departments should be protected by civil service where employees are chosen for their fitness for the work rather than their ability to control votes.

Third Session: Federal Control of Child Labor

Owen R. Lovejoy, General Secretary of the National Child Labor Committee, Presiding

---

Mr. Lewis W. Hine, Director of Exhibits for the National Child Labor Committee, showed a few stereopticon slides to illustrate the various occupations in which children are employed. He said in part: "A self-complacent lady who called at the exhibit the other day did not see why she should be interested in child labor. She did not realise that the flowers on her hat were undoubtedly made in a New York tenement no matter what she paid for them, that the 'imported' Irish lace she wore very likely was made by Italians on the east side of New York, and that her husband's and boys' clothing had undoubtedly passed through the hands of one to a dozen children, pulling out bastings, sewing on buttons, and finishing various parts.

"She did not know that much of her cotton thread and clothing represented the work of children in the cotton mills. It is probable that more than half of the cotton clothing used in California comes either from the Carolinas or from Georgia. Canned peas represent child labor in picking, sorting, and canning, and many kinds of glassware pass through the hands of children in the glass factories. Children still work on cigars in spite of the Cigar Makers' Union and they even have a share in the production of the coal that we burn. Nearer home we find them setting up pins in the bowling alleys, ushering us into the movies or serving us with ice cream at the confectioner's. If we went into it exhaustively I believe we might find that some five hundred children contribute to the comfort of each one of us in one way or another."

Hon. Joseph R. Knowland and Hon. William Kent, of California, told of the fight for a federal child labor law in the last Congress and predicted a different outcome when the bill is reintroduced in the 64th Congress. Mr. Kent remarked incidentally, "I have no sympathy whatever with the economic

argument for production by children. Some way or other this old world can get along under all sorts of conditions, and to say that a community can not exist without the spoliation of the lives of children is absurd and idiotic."

Miss Josephine J. Eschenbrenner, Membership Secretary of the National Child Labor Committee: "Meanwhile, what is happening to those children whom we have failed to reach because the federal bill was defeated? Let me tell you the story of just one little girl whose life was changed by the Louisiana child labor law. She was thirteen years old when the new law took her out of the mill where she had worked since she was ten. All day long she had been watching those spindles in the cotton mill with the windows closed. The Louisiana Child Labor Committee happened to hear that she had left the mill and when they learned that she belonged to a very needy family they gave her a scholarship so that she might go to school regularly and do good school work. For eight months she came each week to the office of the committee with her statement of regular attendance signed by the school principal, but the second requirement not reached. Miss Gordon took her to task and said, 'I really fear you are not trying to learn.' Jennie looked at her with great big open eyes, 'Law! Miss Gordon, my skull has been so tight all this time I just couldn't get a thing into it. I think if you ask my teacher now she will tell you I am beginning to learn. Last week something seemed to snap in my skull, and when she spoke about sums and spelling I begun to know what she meant.' She had begun to apprehend. I won't go into what happened to her later, except that she worked on and on and they were able to put her in a position that paid her well after her school course."

Mr. Owen R. Lovejoy, General Secretary of the National Child Labor Committee, reviewed the aims and the work of the committee: "To pass compulsory education laws, child labor laws and human maintenance laws, and so to help revive and quicken the whole school curriculum and machinery that we shall have a school system in this country that fits the needs of all the people in our communities. Our organisation was one of the pioneers in promoting industrial education and vocational guidance in our schools, and we have at the same time stood firm

against attempts to make the school a convenient tool of business. Our work is carried on under departments of investigation, publicity, legislation, and membership." Mr. Lovejoy referred particularly to the difficulty of securing enforcement of laws after they have been passed, and the efforts of the committee to raise the standard of factory inspection by the various states.

MRS. FLORENCE KELLEY delivered an address on the federal government and child labor.

RESPONSIBILITY OF THE FEDERAL GOVERNMENT

MRS. FLORENCE KELLEY
General Secretary, National Consumers' League

After a state child labor law is on the statute books, the difficulties of the inspectors are only a part of the obstacles that confront the state in getting that law enforced. There are two ubiquitous permanent difficulties. If an inspector works very hard he is commonly removed; that is, if he works hard, and honestly, and ably. I have been watching inspectors working hard, honestly, and ably, being removed for thirty-three years. One who does not work hard, and ably, and honestly will probably be removed anyhow, when the politics of the state change. We have to face that as the situation which has existed in this country for a generation.

While the inspector is working hard, ably, and honestly, it is exceedingly difficult to get a law enforced, if prosecution is required, because local magistrates are usually reluctant to enforce it, and local juries to uphold it. Some years ago I was the responsible head of the factory investigators of the State of Illinois. It shows how we really have improved in the slow process of years that, where Mr. Hine is shocked at finding something over one hundred violations in 15 mills, I found 260 in one day, in one factory, the Illinois Glass Bottle Works in Alton, Ill. There was no violation possible that was not multiplied many times in that factory. And this was after inspections and warnings, and when the statute was over a year old. There

were boys below 14 years old, ranging in age down to 6 and 7, working by day and by night, boys between 14 and 16 working without "working papers," by night, and in dangerous occupations. No violation of the provisions of that statute was missing. I applied to the magistrates of five adjacent counties, beginning with that in which the factory stood; but never did I succeed in getting a magistrate to issue a warrant for beginning prosecution of that all-powerful corporation. In due time when the party in power changed, I was removed from office by the exertions of that corporation.

My successor was literally, physically almost blind and wholly deaf, and had been twenty-seven years on the pay-roll of that company. When the tariff on glass was up he was sent to speak for Labor before congressional committees, having once been a glass-blower. But his successor was of another type; he was neither blind nor deaf, but zealous and energetic. He took his defendants and witnesses from Alton to Winnebago County at the opposite end of the long State of Illinois. After a hard fight and many continuances he obtained a conviction. But he exceeded his annual appropriation and, for the rest of the year, his work perforce flagged grievously. And he afforded an object lesson that that is not the way in which a state can afford to have its child labor law enforced. Of course it is a perfect travesty of law-enforcement, but in those days there was no other way.

Three years after that we were prosecuting, in Chicago, a certain sweater who had employed sixteen girls illegally. One of the most faithful deputy inspectors was a Russian, utterly devoted to his task, and an ardent advocate of rigid enforcement of the law. It had been his painful duty to arrest one of his fellow countrymen and to have a dozen employees subpoenaed. They all came in and swore cheerfully that the law had been kept. We lost the case. When the trial was over the deputy came up, his lips white and trembling with disappointment and rage. I asked, "What is the matter with your fellow countrymen? Don't they hold themselves bound by the commandment 'Thou shalt not bear false witness'?" "You must be just," he said, "if you are going to quote the commandment, you must quote the whole, 'Thou shalt not bear false witness *against*

thy neighbor'; they were bearing it *for* him." To enforce a child labor law we have to have witnesses who hold themselves bound by the law against perjury. All those children knew they had been working illegally that day. The justice in that justice-shop thought it a merry jest that we could not get warrants against those perjured witnesses. He said, "If I were going to choke my office up with perjury suits against witnesses in minor cases, we would not get any business done," so those perjured witnesses went scot-free.

In more recent years my colleague in New York made the rounds of a considerable number of canneries. Our canneries are not exempt from the law; children can not work in cannery, factory, or shed below the age of 14 years, or at night, or more than 8 hours a day. And they must have finished seven years of the curriculum of the public schools before they go to work. But my colleague found between two and three o'clock in the morning a little child about five years old—lying on her back sleeping on a concrete floor, in a pool of water from the condenser, with an electric light shining directly upon her but not waking her. In the little hands were the two halves of the last bean she had snipped. My colleague traced the history of the child's day. She had left the bunk-house at dawn, had gone with mothers and children into a shed, had snipped beans all day. She had had bread and milk, and bread and cheese to eat, had snipped beans as long as she could be kept awake, having her head drenched with cold water, and then at last had been overcome with sleep.

The New York State Department of Labor in two consecutive summers brought more than fifty suits in each summer against canneries. Its trouble was not with perjured witnesses, but with local juries. The cases were properly prepared, evidence was clear and accurate. But local juries would not convict, because most of them were farmers who sell their goods to the canneries, and they have no idea of participating in the punishment of their customers. In two cases the magistrates were employees directly of the cannery which was being tried. In some cases the farmers both furnished fruits and vegetables and were stockholders in the concern. There was every kind of identification of local magistrates and jurors with the de-

fendants. And that condition is so widespread throughout New York, New Jersey, Maryland, and Delaware that there is no present hope of enforcing the child labor law in the canneries in those states with local jurors, in local courts.

I can not see why a cannery should be allowed to employ children in that cruel way, any more than a glass-blower or sweater in Illinois, or a cotton-mill man in the South. But we shall never get laws—state child labor laws—enforced so long as we rely on local jurors. And this is a strong reason for speedy passage of the federal law to take out of interstate commerce those goods which implicate the employment of children under 14 or of older children at night, or more than 8 hours, or in dangerous occupations.

I do not share the millenial belief that we shall, in any near future, have our laws obeyed by the agreement of employers and employees in industries in which the employees are unorganised. Laws are obeyed where there are powerful organisations of workers to compel obedience. And I have seen a growing disposition to obedience in the communities where vigorous consumers' leagues eternally keep watch on lawbreakers whose business success depends on the goodwill of the community. In New York we have been able so to educate public opinion that we have several thousand people, including editors, stockholders and customers whose accounts are worth to local retail merchants tens of thousands of dollars, organised into a body of alert critics. And we find the laws obeyed in the great retail stores increasingly well in New York. But where there is a body of helpless aliens, as in most of the sweated industries, or in remote villages far from the searchlight, it will take a great deal of evidence covering several years to convince me that all employers will voluntarily obey the child labor law. I am convinced that when federal juries and justices and investigators establish standards for industries whose products go into interstate commerce, we shall have something whereby to measure the effectiveness of our state inspection departments and our derelictions in the matter of defending helpless children.

Our immediate need is the passage of the federal child labor law to enable the federal government to enforce the law. For Uncle Sam comes down with a very heavy hand on perjury.

Fourth Session: Child Labor in the West

Dr. Edward N. Clopper, Secretary for the Northern States, National Child Labor Committee, Presiding

---

The meeting opened with a general discussion from the floor. The Chairman called attention to the fact that the child labor bill just passed by the California Legislature would forbid the employment of girls under 18 and boys under 10 in street trades, and referred to the high percentage of street-workers found among juvenile delinquents in the federal government's study of juvenile court records in seven cities.

Rev. Josiah Sibley, of San Francisco, spoke on the ideals of child protection. First and foremost he placed the belief that the child should have a chance of being a child and not a little grown-up who has to bear the responsibilities of life. He laid upon the church the obligation of educating parents to understand what real childhood is.

Mrs. Bert Schlesinger, of San Francisco, told of the aims and the work of the Juvenile Protective Association of that city. "We charge that when a child is brought to the juvenile court, the real culprit is the state that permitted the conditions that made for his delinquency, and we aim to eradicate the causes."

Mr. J. C. Astredo, of San Francisco, told of the work of the San Francisco Juvenile Court, which he described as "the strainer through which passes all the suffering we have been talking about."

The other speakers at this session were Miss Agnes Regan, of the San Francisco Board of Education, Mr. Sidney Peixotto, of San Francisco, and Mr. Lewis W. Hine, of New York.

Miss Agnes Regan said in part: "In connection with the wave of vocational education which has swept over the country, it seems to me there is a danger in training boys and girls for trades. We must stop and think whether we are going to carry vocational education to a point where we shall sacrifice the ideals

of childhood and put in the forefront of the minds of children the idea of money-getting. The question must be seriously considered before we plunge into trade schools and spend the money that should be spent in training children to ideals.

"The boys of 16 who are in the elementary schools should not be there. They should be out of the elementary schools at 14, and then in the higher technical schools getting the training they need. But it is a serious question whether we are going to be willing to narrow the outlook of boys of 12 and 14 by saying to them that they must choose the vocation at which they will earn their own living, instead of sending them into the world from school with a sympathy for every field.

"In our San Francisco school for incorrigible boys we have combined real child labor with child education and we have found that this overcomes most of their difficulties. The boys weave rugs, make furniture for the school, knit stockings and mend their own shoes in connection with the regular work of education. At the end of three or four months perhaps they are paroled and returned to their own schools, and many of them who have been deemed incorrigible go back and carry on their educational career without further difficulty. Money-getting by driving wagons, selling papers, or stealing chickens out of the freight cars has been the cause of much of the delinquency in this school. Most of the difficulty is due to the desire to get money and back of that one of two things: a real need in the home which can only be corrected by a rational idea as to what a man's wages should be; or an unfortunate desire for so-called necessities which a few years ago were luxuries.

"Our boys and girls must be taught the sanctity of the home, that they must help the home not only by helping at home, but by feeling a duty to it and to every man and woman which will prevent them from indulging in those things that mean the sacrifice of the lifeblood of other children."

Mr. Sidney Peixotto said in part: "There is a very important point of view often overlooked in many of these discussions. We are all interested in thinking out what would benefit children and what laws could be made to improve their conditions, but few of us ever go to the other side and ask the question, 'What do the children think of you who are making the laws?'

"When children go to work they do it because they like it and because they have no alternative. If you are fighting the question of work you will have to make them feel that you are doing something that meets their demand. If you can get a federal law that will prevent children from working what is the alternative? Where will the children go? Back to school you say. I have had six thousand boys as members of this club and I do not believe that more than five hundred liked school. Those fifty-five hundred boys were not looking for something degenerate, they wanted to be something, to do something; if the school were attractive they would stay there every time. There is the great problem—to make our schools so attractive that they will clear the factories and shops of these boys.

"The great problem facing us to-day is to get every child built up so that it can use every faculty. If newsboys were given baseball suits and taken out to some baseball grounds and given a series of games, I believe every boy would leave his job and play baseball. If we had swimming tanks that were free to the boys, they would be in those swimming tanks a large part of the time, and if there were games that gave them a big program of play after school, there would be very few children on the streets.

"The greatest program is to make our schools happy places for the boys and girls who attend them. It is no use to take them out of the factory and put them back in some of those dreary schoolhouses that we can find in every community. No law could be devised that would make them go back. But there are wonderful possibilities in schools and playgrounds and settlements and great social centers where the fight can be made to give children physical strength to stand the tremendous strain of modern civilisation. Last year we measured two hundred boys and there were not five that had a proper physical start in life. We have physical training in the schools but it is not serious enough to bring out any real physical development such as the Germans or Japanese insist on giving every child. The English, French, and American people just grow up as they are born. Where a whole country looks entirely to people who have brain and gives little or no attention to physical strength and physical control, it makes a very serious problem.

"The first thing in this fight on behalf of the children is to

begin with them very young. Most people in America think of a boy as somebody 16 or 18. Now boys are boys at about nine or ten in this country and we do not handle them young enough or take their physical development seriously early enough. About the only serious work that is being done in California is at the University where the young men are 18, but that is too late; they are already started in life physically. The time to mould their physical strength is at nine or ten. These are things that must be learned before we can win this fight on child labor.

"Children that can be developed into giants of strength, children who have intellectual and artistic faculties—why don't we cultivate all these qualities? I hope in this child labor fight the questions will be asked more often, 'Are these laws to drive children out of the factories providing a sweet wholesome substitute? Do they really help the children? And lastly, what do the children think about them?' "

SOME LOCAL CHILD LABOR PROBLEMS IN CALIFORNIA

LEWIS W. HINE
Director of Exhibits, National Child Labor Committee

During the month I have spent in the various parts of this wonderful state I have been gradually converted to a very optimistic point of view regarding most of the child labor situation. There is, however, always the danger of self-complacency here as in any section where so much has been accomplished.

Most of your citizens that I have met tell me with due pride, "We have *never* had any child labor problems out here." But when I turn to the last Census of Occupations I find a surprising record. In 1910 the government found over eleven thousand children from 10 to 15 years of age working for wages, and only one-fourth of these were in agriculture. Most of them were in manufacturing, trade, clerical occupations, domestic and personal service. But this, of course, is now ancient history. The report of your Bureau of Labor Statistics for the years 1913-1914

shows that, for the ten months reported, certificates of employment were issued to only 1,921 children, while complaints filed with the bureau and investigated numbered 173 and on these there were 21 prosecutions.

Of course, we can not prophesy what the next census will reveal, as compared with the eleven thousand reported in the last, but in spite of the fact that industry is forging ahead by leaps and bounds, we trust that your special variety of eternal vigilance will cope with the problem and make the same improved record as the past five years show. But there are certain forms of child labor which do exist under unfavorable conditions and to which the public seems not thoroughly awakened, even in California.

Taking street-trading for example. It has taken all these years for California to wake up to the realisation of the need for protecting the little merchants of the streets and for two years more it will rest content with a 10-year age limit. What a discrepancy between the protection accorded your women workers and that given these children! I have found children from 5 years of age upward selling papers in Sacramento, Los Angeles, San Diego, and San Francisco, and it is very evident that a long campaign of education will be required before the citizens of California realise that the problem of street trades is just as serious as that of factory work.

But what shall we say of a state that permits its children to be employed in the messenger service? The California law permits children of 12 and 14 to work on the day service and boys of 18 at night, and yet this is the occupation which inevitably leads to a complete knowledge of the underworld. The Attorney for the State Board of Pharmacy said of the messenger service in a letter to the legislature last March when an attempt was made to raise the age limit for night messengers from 18 to 21 years: "The messenger service ruins more boys than any other employment. Their work takes them to houses of ill-fame. They are open to strong temptations. I have prosecuted many messenger boys under age for selling drugs. . . . A large part of the illicit traffic in drugs is done by messenger boys. I think that you can not state it too strongly if you say that a large percentage of boys who enter the messenger service are practically ruined for any other work."

To be sure, the number of messengers affected by this work in California can be reckoned by hundreds and not by thousands, but suppose you were to be informed to-day that there were nearly a thousand cases of bubonic plague in your midst, would it cause any concern? Can you not see the authorities and private citizens as well straining every nerve to protect the community? Yet you tolerate a thousand cases of moral bubonic plague among the boys of your state, and you hope for the best. There is no *best*,—you may as well be honest and expect the worst. Listen to these words from one of your probation officers who has dealt with delinquents all his life: "I would rather see my boy in the cemetery than in the messenger service, in spite of the fact that the larger companies are doing all they can to safeguard the boys. The only way to protect them is to keep them out of it."

Fifth Session: A Charter for Childhood

Owen R. Lovejoy, General Secretary of the National Child Labor Committee, Presiding

---

MR. LOVEJOY: "The subject of this afternoon is one of the most important of the whole discussion. There has been a great amount of loose and unscientific thinking in the matter of legislation relating to children. The National Child Labor Committee has felt from the beginning that there ought to be some way to coordinate the various legislative measures for the protection of children, and this has impressed itself upon us so much that for the last year or two, especially through Dr. Clopper, our Secretary for the Northern States, we have been giving particular attention to this phase of the work."

DR. CLOPPER: "The vital difficulty of the whole problem is the failure to appreciate the essential interdependence of child welfare activities. We overlook, for example, the elementary principles that the age limit for compulsory attendance at school, the age limit for the prohibition of child labor and the age limit for the public relief of children from want should be one and the same, and that if one of these limits is extended or changed the others should be changed to correspond." Dr. Clopper then outlined the scope of the charter along lines similar to those presented at the Washington conference. In conclusion he said: "At the Baltimore Conference of Charities this spring a meeting was called of all interested in the proposition to formulate a Children's Charter in this country, and a temporary organisation was effected for the purpose of drawing up such a charter. C. C. Carstens, Superintendent of the Massachusetts Society for Prevention of Cruelty to Children, was chosen as head, with power to appoint four others, these five to choose representatives of all the different lines of child welfare work in the country. It is hoped that this committee will formulate very definitely the principles upon which the different lines of child welfare work are based, and that it will recommend suitable

machinery for carrying out these principles in the different communities. It will not be a rigid combination of laws recommended for general adoption, but will be a setting forth of principles that will serve as a guide to the several states and individuals generally in their consideration of the different problems."

Dr. Clopper was followed by Dr. Jessica B. Peixotto and Mr. E. B. DeGroot who delivered the following addresses.

NEW IDEALS IN THE SCHOOLS

Dr. Jessica B. Peixotto
University of California

As it is notorious that I know nothing about pedagogical questions, I assume that the ideals I was to speak upon were not new ideals as to what to teach but rather new ideals that should inspire those who give the instruction.

Most of the thousands of teachers at work in our schools are engulfed in questions of what to teach and how to teach it. Slowly the demand for the "socialisation" of their data reaches them. Even more slowly do they find out that "socialisation" means revision of many of the working principles of life. The majority of those guiding children's thinking are themselves still guided by theories of life and conduct long since adopted and rarely reanalysed.

Four doctrines bearing particularly on our field of discussion are deeply embedded in the minds of most of the world, and are, I believe, as well guiding principles for most of those who teach in our schools. One of these is the belief that the real cure for most social evil lies in the subjective direction of our personal life, lies in self-direction. Another fixed doctrine is that spiritual growth stops when there is nothing to be endured, when there is no worry. A third concept that colors all discussion is belief in the moral value of work. A fourth is the idea that though a few may be privileged to do pleasant work, unpleasant routine is the necessary discipline for most persons.

One might sum it all up, as belief in the social prophylaxis of Work and Worry.

Anyone whose life brings fairly wide contact and whose own point of view still permits frank debate rather than urges to insistent propaganda has ample experience to illustrate what I mean. Such a one hears objections to child labor legislation which are inspired neither by employer's greed nor by parental carelessness; not by the grind of poverty nor the curse of irresponsibility, but by a viewpoint no longer socially serviceable, though honestly held. Numberless kindly people, whose main proclivities lead them to know only the technique of social activity, protest against removing children from wage work, prompted by an earnest conviction that some one or all of the theories noted above are true. They feel the same eagerness to see children in industry that De Foe did and have the same high but outworn motives for desiring to see them there. They sincerely doubt the advisability of further steps in the child labor movement, because they believe that when you take the child from wage work you risk his future. Though you lighten his physical burdens, you risk the proper development of his sense of responsibility. Further, you turn him over to wasteful and indefinite pastimes; also you limit the number of those to do routine work. Thus you jeopardise the future of the child; thus you weaken the nation.

As I see it, to combat these belated modes of thinking is the most important service those interested in preventing child labor can now render.

The most real obstruction to further progress in child labor legislation, as to all of this great movement to "project the future into the present," is the lack of vision in communities wholly well-disposed and prosperous—lack of vision concerning means to ends.

Consult the man in the street. What will he say? This morning one said to me: "What are you people doing, trying to keep the small boy who sells papers off the street? You're just taking the bread out of the mouths of mothers and orphans. What harm does it do the boys to sell papers anyhow? They make a few pennies and a few pennies count when a family is poor. They just have to get up a trifle earlier and hustle round

a bit and yell a little. Boys like hustling; they like to yell; and you stop them from hustling and from yelling."

I had time to explain just why it was not well for this boy, even in an outlying district of the city, to be a street trader. I had the chance and I took it to explain how he risked acquiring too early a knowledge of things best learned in later life; how newsboys come to have overstrained nerves in underfed bodies because they get up so early and wait around to get their papers and then, unfed, hurry about with them for long hours; how they often peddle them in improper places because these places are the most remunerative. In a word I told why for these boys it is different now from the time when their fathers and grandfathers did the same thing; and the story, so trite to you and to me, was as new as though it had never been told before and was, I am glad to say, convincing.

There is too the other type of objection that I get from the man, often a school man, who declares the worst nonsense he has ever heard is trying to keep children from working in the fields. "What do you do instead?" he protests. "You take them out of the fresh air and put them into a miserably close schoolroom under some ignorant girl who gives them nothing of real use, not even discipline. The average boy learns more and means more to the community after hours spent in the fields serving a useful purpose and learning nature's lore at the same time, than he can get from days spent under some old maid in the schoolhouse."

It is part of the present unrest that the school cannot readily prove its superiority to the shop, the farm or the street as a place to get training in self-support and self-direction. It is part of the hope of the child labor movement that the future is not far distant when we can point to a more satisfactory situation in the school.

The program of child labor cannot be reproached with failure to appreciate the claims of vocational training. Along with a demand for compulsory schooling has gone an equally definite claim for an education that shall send those who finish our schools into the industrial system, well equipped to get and to keep a job. I am not sure, however, that the reasons for urging occupational training as a substitute for wage work have

been formulated among us as explicitly as the situation requires. Our desire to take the child away from wage work is based on the hope of banishing unmeaning routine from all task work. Witness the movement for vocational guidance with its purpose of seeking out aptitudes and teaching insight into tasks undertaken. We believe that work done by ignorant persons dully performing the same task for a lifetime is drudgery and that drudgery is a national menace. We cherish the hope of banishing such work and thus doing away with its most blighting mental and social reactions. Why? Because, we believe that drudgery can gradually be handed over to the machine. The 'slave' of modern society can and should be machinery. Child labor agitators must unite to make the teacher see clearly that vocational training should train, not merely for a trade by which to earn a living but also for intelligent, progressive existence.

We want the child to comprehend the processes of industry; we want it to know the latent promises of industry, both to it as an individual and to us all. If we can presently fill the factories with workmen, each really understanding not merely the particular purpose of his machine but also the mechanics by which it operates, then and then only we may hope men will invent their way out of the drudgery that now so limits social advance.

It is then our immediate duty to clear away cobwebs, to protest against the creeds that, sanctifying work, proclaim the world's irrevocable need of it and the individual's special disciplinary advantage from it. We must make it clear to ourselves, to the public and especially to the teacher, that work is subject to classification, that some of it is holy, some of it most unholy; some of it good for everyone, some of it good for no one. When by repeated illustrations drawn from the tragic stories of dependents and criminals that the psychotherapists are giving us, we shall be able to furnish the necessary proof that the same thing is true of responsibility undertaken too early, the way will be opened for a readier support from the many well-intentioned obstructionists who now protest our propaganda.

Continuous routine work and economic anxiety are the heritage of no man and no society will have its full quota of self-supporting, self-sufficing citizens if it permits many of its

citizens to be the prey of either. The hygienist tells us so, the psychologist reaffirms it, the student of social pathology brings facts to prove it. Let us tell the story at all times and seasons.

THE RIGHT TO PLAY

E. B. DeGroot
Department of Physical Education, San Francisco Schools

If the children were permitted to write their charter they would insist on just one article: "The process of civilisation shall in no wise interfere with the play of children up to 16 years of age at least." And I think the children would be right. We know that these processes are interfering with the play of children: not only those who go to work but those who are without work.

We all recognise the fact that our modern civilisation has broken down the fine social balance which children had in my time and yours. So much of school and so much of play, so much of chores and so much of contact with stronger personalities; these things were worked out for us as a matter of course. But all that has been changed. Children are not born and raised in the fine old adequate homes that we had. We had the old shed close to the kitchen where the tools and the lumber were, where we could build a shack and carry on the process of play with our mothers saying a guiding word from time to time from the window. Now boys and girls live in apartment houses, built like post-office boxes one on top of another, and if there is a back yard it is presided over by the janitor who will not permit children to rally there to work out their play instincts. They must go into the streets, and even the streets have changed so that they are places of danger rather than of social intercourse as they were thirty or forty years ago.

What are we going to do? The children have no places to play and we have not even the old chores for them to do. The telephone runs all the errands and there are no hems to be sewn or worsted emblems to be made. The constructive occupations of children have been taken away and we make no provision for

their play, so that we give our opponents the opportunity to say that they ought to have a chance to work, that they ought to do something in all this spare time to support themselves and their mothers. Work is all right provided it is creative work and not drudgery. Making shacks and wagons, digging post holes and making fence lines is to the small boy as different from weeding the garden as the swimming pool is from the basin and the wash cloth. We need to let the children engage in those pursuits which will give them a taste of victory of tools over materials, and not of subordinate drudgery. The kind of work we did in the back yard when we had a circus was fine. We gathered in the animals of the neighborhood, made the tents and wagons for the menagerie, and took pins instead of money for pay. The minute children begin to deal in money they seem to me to be on the wrong track and I am in sympathy with any movement the object of which is to take away work from children and to give them more of play.

It seems to me we need three separate and distinct things so far as play is concerned.

First, we must do something about the home where there is no place to play. Children no longer gather around the fireside, they have no front yard, they have no back yard, they are not wanted in the home, and they have no fair chance to play. I believe this charter of childhood should say something about real estate values. We can no longer spare a few feet of ground as play places for the children. We need to get together, the man who sells the land, the man who builds the home, and the people who inhabit the home, and see to it that there is some provision made for a place about the home where the children may play so that they will not run out on the street and get a wrong idea of play. Men have gone mad squeezing dollars out of every foot of land with no thought for the play of children.

The next thing is to build the playground around the schools. Increasingly we are putting up school buildings with inadequate land and inadequate isolation and ventilation, in the suburban towns as well as in the cities.

And lastly, there must be play *time*. The home and the school must come together on this problem of the leisure time of the child and educational direction must be given to it. That

means large and adequate playgrounds where they can be directed in their play, and work out in a manner the virtues that are claimed for work. If children played hard at a given period in their lives I believe they would work harder later on. There is a great deal in having a child get a taste for victory as early as possible and the easiest place for him to get this is in the playground. They all have an equal opportunity when there is just a little leadership.

I believe men of industry are very shortsighted in wanting children to go to work when they are young. They talk of economy and efficiency in industry, but England has found by efficiency studies that these little tots do not give efficient service. The most recent studies of efficiency with reference to children show that, when they were promised more pay, clothing, or implements of play if they did a little more work, they did not respond, but when they were promised more play *time* their output was considerably increased.

A paper by HON. J. C. CLARY, Commissioner of Labor in Arkansas, was read telling of the fight that was made last winter to prevent the new child labor law in Arkansas from being repealed.

The Chairman then introduced REV. LLOYD B. THOMAS, of Nevada, who said in part: "We are suggesting a charter of childhood. My opinion is that when we have laid down what we think is the ideal for the development of the child, or when we have even put into legislation what we consider ideal working conditions for children, we shall also have to write a charter telling what we are going to do for the mothers and the fathers. This concerns the church to the extent that the church's function is that of inspiration, filling its members with enthusiasm and zeal. Dr. Adler said that in America our ideal was the ideal of power which we expressed in money-making. It is the function of the church, the function of religion, to change that ideal and give us such an ideal of manhood and childhood, such an ideal of citizenship, that we will change our schools, our real estate system, and all those conditions in our society which are based simply on the foundation of money-making."

A paper by MRS. LILLA DAY MUNROE on "The Responsibility of Parents" was read. "The case is not Childhood against Parents but Childhood against Society. The child has rights

to life, health, education, and play which can be guaranteed to it only by the state."

A resolution was adopted commending to the Governor the child labor bill reported at Sacramento.

DR. CLOPPER then moved the following resolution:

RESOLVED: That the officers, delegates, and visitors to this, the Second Part of the Eleventh Annual Conference on Child Labor, extend to the San Francisco Committee on Arrangements, the California Child Labor Committee, the Juvenile Protective Association, the Woman's Civic Center, the Press and the Churches of San Francisco, especially the Emmanu El School, where most of the meetings of the Conference have been held, the officers of the Panama-Pacific International Exposition and all other organisations and individuals contributing to the success of the Conference and the comfort and entertainment of the visiting delegation, our most cordial thanks for the hospitality enjoyed in this beautiful western city and state, and the inspiration derived from the first national conference on child labor west of the Mississippi River.

The resolution was carried unanimously.

After a general discussion the Conference adjourned.

THE SEVEN SINS OF CHILD LABOR

DR. FELIX ADLER

1. The direct and notorious victim of child labor, the lamb torn by the wolf, is the child itself, in so far as its physical, mental, and moral development is maimed. Child labor is primarily and obviously a sin against the child.

2. Child labor is a sin against the parents, though often they are accomplices in perpetrating it. From the point of view of economics, we are bound to say that the wages of undeveloped human beings ought not to compete with the earnings of adults. Morally, the spectacle of fathers wholly or in part idle while they are being supported by the toil of their immature offspring, has in it something revolting. It is contrary to the order of nature. Even birds supply food to their nestlings until they are able to do for themselves. Even wild, ferocious animals are moved by a marvelous instinct to put their life in jeopardy if necessary to protect the life of their young. It is a condition which Nature has annexed to survival that the older generation shall sustain the younger during its period of preparation for the struggle of existence, be that period long or short.

If there is to be sacrifice, it is the older generation that should sacrifice itself, in order that life may flourish more abundantly in the new. But to blight and exhaust the life of the young in order to preserve the stationary or dwindling life of the old, is an inversion of the right relation, it is *contra naturam*, it has about it something of the repulsiveness which attaches to any perversion of natural tendencies.

3. The precocious toil of children is a sin against the spirit of youth. And it has in it this peculiar taint of meanness that it takes advantage of the child's playful ambition to make believe being a man in order to rivet him in good earnest to pursuits which only a man is fitted to follow. Children are often kidnapped from the home into the factory with their own consent,

for they take a pathetic pleasure in imitating the occupations of their elders, and the prospect of earnings, however pitifully small, flatters their premature desire for independence. They are in fact often eager for the chains which once they have assumed they will hardly ever be able to put off. The sin of the exploiter is like that of the erl-king in the ballad, who appeals to the child's play instinct (in this instance the passion for make-believe) in order to woo it to its destruction.

4. It is a huge obstacle put in the way of industrial progress. The progress of industry is in no small measure conditioned by increase of efficiency among the workers. Efficiency depends on concentrated training, issuing in superior skill. When the time allotted to training is scandalously abridged as it is by child labor the net result of education is poor for the worker, and disastrous to the calling in which he is employed.

5. The fifth sin of child labor is against good citizenship. It is a commonplace saying that democracy cannot be worked except by intelligence. For a people to be self-governing, it is not enough that the public good be acknowledged to be the object of government. Unless the masses of the people are intelligent enough to distinguish what is really for the public welfare from what is only so in appearance, they will easily become the tools of particular interests or of ambitious demagogues. The chief aim in a republic therefore must be to make the masses of the people as intelligent as possible, and especially to develop in them the faculty of discrimination or judgment. And here we should be particularly warned against confusing the mere ability to read with the kind of intelligence necessary for the exercise of good citizenship. It is true that literacy, even of the barest description, is better than total illiteracy, and yet it offers in itself but a feeble guarantee for the wise exercise of the franchise. Very much more than just literacy is required, nay, is indispensable, to the sound operation of democratic institutions. A body of electors who are merely able to read the newspapers, without a higher mental discipline superadded, may be compared to a town situated on the banks of the Mississippi or of some other great river, and drinking the polluted waters of the stream as it pours unfiltered through the mains. The newspapers, and in general the ephemeral literature

of the day, are the pipes through which flow in on the mind of the readers truth and falsehood, beauty and deformity, foulness and purity hopelessly intermingled. There is needed the filter to strain out the one kind and admit the other. And judgment is the filter. But judgment must be cultivated, and it takes time to do so. The child that is graduated at twelve into the mill has scarcely acquired the rudiments of learning, the bare and insufficient literacy. How much less can it be expected to have received a sufficient quickening of the faculties to make possible the ripening of judgment later on.

6. The sixth sin inherent in the exploitation of child labor is against the exploiter himself. In his eagerness to gain the prestige connected with great wealth, and even more to enjoy the sense of the power exhibited in the process of accumulating wealth, he starves in himself as he destroys in his child employees the seeds of different and nobler kinds of power; he narrows his life, so that it flows almost entirely in a single restricted channel. He courts success in one direction, to meet with spiritual defeat in other directions. If he could be made to pause in his hot career long enough to divine the possibilities in the child which he misuses, he might be led to discover the same divine possibilities which he has neglected in himself.*

7. The toleration of child labor by the American people is a sin against the supreme American ideal. Every nation, besides being under obligation to secure to its members safety and prosperity, has a certain ultimate ideal. There is a certain goal towards which it is to look, a certain task in the history of mankind which it is called upon to perform. That task may be described in a general way as the task of contributing toward the evolution of a higher human type, toward the creation of a manhood and womanhood on earth as far removed from the present type as that is perhaps from the type of the caveman. But in attempting the perfection of the race the aristocratic principle thus far adopted by the older nations of Europe has led them to pay attention to the conspicuous few, and to ignore the inconspicuous many. They spent their efforts in still further refining that which was already fine, or seemed so. They left aside, as negligible with respect to the advancement of the human

*See for the fuller presentation of this point the Annual Address of the Chairman.

type, the seemingly unfine multitude; they hedged off a little garden patch in which choice flowers were to be cultivated, and allowed the larger area outside to remain a wilderness.

The American ideal is different. It has for its source the belief in the uncommon fineness that is latent in the common man,—latent even when not obvious, susceptible of being brought to light even if deeply hidden. The American ideal, as related to the grand purpose of our race on earth—the evolution of the more perfect type—rests on the conviction that in the production of this type no germ of talent may be overlooked, no trace of ingenuity or power may be treated as superfluous; yes, on the conviction that even a sublime genius can not wholly fulfil his promise unless subject to the influence and replenished with the energy that flows unseen in the humblest of men. And it is because child labor crushes these unnumbered possibilities, in so many thousands of the children of the next generation, that it becomes the unpardonable sin against the American ideal, retarding so far as in it lies the fulfilment of our task as a people, postponing the realisation of our truest vision, frustrating our hope, and with it the hopes of mankind that are so intimately bound up with our own.

Do You Want A Federal Child Labor Law?

WRITE THREE LETTERS TODAY

Now is the time to show your Senators and Representatives that you are in earnest about a federal child labor law.

The bill that passed the House of Representatives in February, 1915, will be reintroduced immediately after Congress convenes. It prohibits the shipment in interstate commerce of factory or cannery products in which children have had a part (1) Under 14 years of age or (2) Under 16 at night or (3) Under 16 for more than 8 hours a day. It also excludes the products of mines and quarries where children under 16 are employed at any time.

This bill ought to pass *both* Houses this time but it won't unless all our members do their part.

We Ask You To Do Three Things

1. Write to your Senators and Representative, bespeaking their interest in the child labor bill when it is introduced. (The postmaster will give you their names and addresses.)
2. Ask us for copies of our new federal leaflets (Nos. 60 and 248) to use among your friends.
3. Help us to reach *one* newspaper in your home town by telling us we may send you from time to time material for the editor.

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

National Child Labor Committee

INCORPORATED

ORGANISED APRIL 15, 1904

105 East 22d Street - - - New York City
204 Bond Building - - - Washington, D. C.

OFFICERS

FELIX ADLER, Chairman
SAMUEL McCUNE LINDSAY,
HOMER FOLKS, Vice-Chairmen
V. EVERIT MACY, Treasurer
OWEN R. LOVEJOY, . . General Secretary
A. J. McKELWAY, . Secretary for the Southern States
EDWARD N. CLOPPER, Secretary for the Northern States
JOSEPHINE J. ESCHENBRENNER, Membership Secretary

BOARD OF TRUSTEES

FELIX ADLER, Chairman
JANE ADDAMS
FRANCIS G. CAFFEY
HOWELL CHENEY
EDWARD T. DEVINE
HOMER FOLKS
WILLIAM R. HARMON
FLORENCE KELLEY
ADOLPH LEWISOHN
SAMUEL McCUNE LINDSAY
V. EVERIT MACY
CHARLES P. NEILL
ISAAC N. SELIGMAN
LILLIAN D. WALD
STEPHEN S. WISE
JOHN W. WOOD

OBJECTS

To promote the welfare of society with respect to the employment of children in gainful occupations.

To investigate and report the facts concerning child labor.

To raise the standard of public opinion and parental responsibility with respect to the employment of children.

To assist in protecting children by suitable legislation against premature or otherwise injurious employment, and thus to aid in securing for them an opportunity for elementary education and physical development sufficient for the demands of citizenship and the requirements of industrial efficiency.

To aid in promoting the enforcement of laws relating to child labor.

To coordinate, unify, and supplement the work of state or local child labor committees, and encourage the formation of such committees where they do not exist.

ACCESSIONED
RECEIVED
DEC 28 1915
UNIV. OF MICH.
LIBRARY

331.35
N28c

The Child Labor Bulletin

NOVEMBER 1915

CONTENTS

ANNUAL REPORT

CONSTITUTIONALITY OF THE FEDERAL CHILD LABOR LAW

PUBLISHED BY

National Child Labor Committee

The Child Labor Bulletin

Volume Four
Number Three

NOVEMBER, 1915

Issued Quarterly
Price $2 per Year

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1913, at the Post-office at New York, N. Y
under the Act of August 24, 1912

THIS NUMBER FIFTY CENTS

Copyright 1915
by the
NATIONAL CHILD LABOR
COMMITTEE

TABLE OF CONTENTS

EDITORIAL NOTES 137–143

ELEVENTH ANNUAL REPORT OF THE GENERAL SECRETARY, NATIONAL CHILD LABOR COMMITTEE 144–154

CONSTITUTIONALITY OF THE FEDERAL CHILD LABOR LAW ..... *Nathan William MacChesney* 155–163

Editorial Notes

Federal Bill

At the beginning of its twelfth year of work the National Child Labor Committee is fortunate enough to be actuated by one controlling purpose which should stimulate its staff, members and friends to closer cooperation than ever. This immediate purpose is, of course, the passage of the federal bill for which we worked together last winter. The bill will come before Congress this year in practically the same form as the Palmer-Owen bill of last year. In spite of the fact that the objection of one man succeeded in killing the bill in the Senate last year we still believe with Senator Kenyon that "Congress will pass it if the people want it passed." Certainly the large majority by which the House passed it last year, the endorsements of many national and sectional organisations; the expressions of belief in it by newspapers all over the country besides the hundreds of endorsements by individuals can not fail to affect the temper of both Houses toward it.

But, as Senator Kenyon said, the passage of the bill depends on the will of the people, and so our campaign for publicity this winter must be more far-reaching than ever. Last year 416 of our members cooperated with us by placing our news items in their local papers. About 650 of our members wrote their Congressional representatives urging its passage. But this year we hope to double the number of individuals working with us. To this end we have already sent an appeal for help to all our friends who observed Child Labor Day last year. Responses are most encouraging. Besides this we are sending in our Child Labor Day pamphlets a plea for active individual support. "Do One Or All Of These Things", the pamphlet reads.

"Arouse public interest by arranging meetings to discuss the bill.

Spread the facts by placing in your local newspapers material the National Child Labor Committee will gladly send you.

Pass resolutions endorsing the bill in your clubs, lodges and other organisations.

Write your Senators and Representative urging them to vote for the bill, and have your friends write.

Send to the National Child Labor Committee your name and the names of your friends who are interested so that you and they may be kept in touch with the progress of the bill."

ACCESSIONED RECEIVED
DEC 28 1915
UNIV. OF MICH. LIBRARY
331.35
N28c

The Child Labor Bulletin

NOVEMBER 1915

CONTENTS

ANNUAL REPORT

CONSTITUTIONALITY OF THE FEDERAL CHILD LABOR LAW

PUBLISHED BY

National Child Labor Committee

The Child Labor Bulletin

Volume Four
Number Three

NOVEMBER, 1915

Issued Quarterly
Price $2 per Year

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1913, at the Post-office at New York, N. Y
under the Act of August 24, 1912

THIS NUMBER FIFTY CENTS

I would like for someone to tell me how the mills throughout the north and east pay better wages than the mills of the south when the cotton has to be shipped north. It seems to me if the mills throughout the New England States are making money that the mills of the south would not have to cut wages if the child labor bill was to pass. I hope that the fathers won't pay any attention to the stuff the Mill News is handing them trying to scare them and get them to petition away their children's rights; and let that bill become a law which I am sure will be of benefit to their children in the time to come.

R. J.

Danville, Va., Oct. 14, '15.

The Case of Mary Phagan

The Frank case attracted wide attention throughout the nation while the case of Mary Phagan was soon forgotten. But it is the Phagan case and not the Frank case with which the friends of child labor reform are concerned. Mary Phagan went to work in the National Pencil Factory when she was twelve years of age. She would have been fourteen on the first of June, 1913, a little more than a month after her murder. The child labor law of Georgia in 1911 permitted her to go to work at twelve years of age. The Georgia Legislature was duly importuned to change the age limit for working children in the session of 1907 and every year thereafter until 1914, when it was done. But that was a year after Mary Phagan's death.

I happened to be in Atlanta at the time of her murder. I made inquiries from the proper sources for information concerning the factory. I was in Atlanta during the Frank trial. I have read a good deal of the original evidence that came out at that trial. It is now a matter of sworn testimony that from the point of view of moral conditions, of sanitary conditions and of safety conditions, the factory was a place to whose threefold sources of danger no young girl should have been exposed. That any child of twelve years of age should have been allowed by law to work in a factory in Georgia until the year 1915, and any child still who is orphaned or the child of a widowed mother, is itself an indictment of our civilisation.

It would be difficult to compute in dollars and cents what the Frank case has cost the State of Georgia, for not only are there to be taken into account the actual costs of a long trial, of opposing appeals to state and federal courts, but, also, for

a while at least that loss of good will which is such a necessary element of business relations between men and states. But there would not have been any Frank case if there had not been a Mary Phagan case first. All the expense and trouble and disgrace and public condemnation would have been avoided, if a proper child labor law, well enforced, had been in effect in 1911 when Mary Phagan was allowed to go to work. Men have built a monument to Mary's memory and they have risked their own lives and discounted nation-wide condemnation in the effort to "avenge her death." Would it not have been better if some of that sentiment and zeal could have been brought into play to shield her while alive, and thousands of other Marys and Lucys, and Jennys and Kates from the moral and physical hazards of factory life? Is it not in order to suggest that the present child labor law is still inadequate for their protection, that it is not enforced, and that the Legislature which met last summer refused to grant the one inspector that was asked, to aid in its enforcement?

Is not one Mary Phagan case enough?

A. J. McKELWAY.

Eleventh Annual Report of the General Secretary of the National Child Labor Committee

For the Fiscal Year Ending September 30, 1915

Owen R. Lovejoy, *General Secretary*

Our most important work during the Eleventh Fiscal Year has been the promotion of a bill in Congress to forbid interstate commerce in the products of child labor. This bill, known as the Palmer-Owen Bill, was introduced in the House of Representatives by Hon. A. Mitchell Palmer of Pennsylvania on January 26, 1915, and by Senator Robert L. Owen of Oklahoma in the Senate on February 21, 1915. The text of the bill has already appeared in our Bulletins and the history of the campaign has been fully recorded. It is necessary here only to repeat that three hearings were given by the House Committee on Labor, and on February 15 the bill passed the House by a vote of 233 to 43.

In the Senate the bill was killed on the last day of the session by the objection of Senator Overman of North Carolina. The measure was very favorably considered by those interested in the welfare of children throughout the country, and the following organisations definitely endorsed the bill, several sending messages to Congress in its behalf: American Federation of Labor, American Medical Association, American Osteopathic Association, Association of Governmental Labor Officials of United States and Canada, Farmers' Education and Cooperative Union of America, Federal Council of Churches of Christ in America, International Child Welfare League, National Association of Compulsory School Officials, a large number of state federations of women's club, church conferences, health officers, temperance unions and local bodies. At a special meeting of the Committee on Federal Legislation, January 26, the Secretary was authorised to extend the campaign for the passage of the bill and to expend funds not to exceed $5,000 in publicity.

At the meeting of the Board of Trustees on March 15, 1915, it was decided that the effort to secure the passage of this bill should be renewed in the next Congress and plans have been made accordingly. The bill will be reintroduced at the opening of next Congress.

I. Legislation

State campaigns have been conducted in a majority of states where legislatures were in session and favorable legislation was secured in Alabama, Arkansas, California, Connecticut, Florida, Iowa, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wyoming.

A digest of existing child labor laws at the close of these legislative sessions was recently published in full by this office in pamphlet 249 by Florence I. Taylor. We refer here to only two or three of the more important gains.

Compulsory School Attendance Laws

In Florida a local option compulsory school attendance law was enacted, providing that children between 8 and 14 years of age must attend school, for not less than 80 days in districts that adopt the law; South Carolina also adopted local option compulsory school attendance laws, the latter requiring children between 8 and 14 years to attend the entire school year; Texas and Alabama went even further and adopted state-wide compulsory school attendance laws, Texas for children between 8 and 14 years, Alabama for children between 8 and 15.

This break in the opposition of Southern states to compulsory school attendance laws is perhaps more significant than any other event, of the changing spirit toward the conservation of child life.

Eight-hour Day

The 8-hour day for children under 16 was secured in Iowa, while Pennsylvania enacted a law providing for a 9-hour day, and 51-hour week under 16 years in all occupations. But not less than 8 of the 51 hours must be given each week to continuation schools where established.

Street Trades Laws

Laws regulating street trades were passed by Alabama, California, Iowa, Pennsylvania, and Rhode Island.

Michigan Raises Age Limit

Michigan raised the minimum age limit for common gainful occupations to 15 years. This law was secured through the activity of the Detroit Manufacturers' Association which has taken the position that children under 15 should be excluded from industry not only out of consideration for the children but in the interest of business itself.

Arkansas Law Unchanged

In Arkansas an attempt by the Legislature to repeal the Act secured last year through popular initiative was defeated by the timely activity of friends of the new law.

Defeats

Among the legislative defeats must be mentioned the bill in Georgia to provide for factory inspection; the entire program of child labor legislation in North Carolina and Texas; the bill to raise the age limit from 12 to 14 years in South Carolina; and the bill in West Virginia seeking to prohibit employment of children under 16 years at night.

The only distinctly backward step taken was in Tennessee where canneries were exempted from the 14-year age limit outside of school hours and from all hours regulations.

In the legislative sessions the Committee was represented by some member of the staff in the following states: Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Vermont, Virginia.

II. Investigations

Following the policy of the Committee to keep itself supplied with accurate and up-to-date information, investigations of textile and other factories, mines, motion pictures, street trades, home work, agriculture, canneries, and messenger service have been conducted by our staff in Alabama, California, Colorado, Georgia, Illinois, Iowa, Maryland, Massachusetts, Michigan, New York, North Carolina, South Carolina, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.

Investigations have been conducted under the direction of Dr. McKelway and Dr. Clopper by Mr. Hine, Mr. Bremer, Mr. Jones and Miss Eleanor Adler. The evidence secured by Miss Adler of tenement home work by children in New York City demonstrates that despite the law enacted two years ago this custom has not materially decreased. This evidence was used to supplement material previously gathered for the State Factory Investigating Commission, and had weight in inducing the Constitutional Convention to provide for legislation entirely prohibiting such employment.

Dr. McKelway continues in charge of the office at Washington, directing the campaign for the federal child labor bill, and also supervising our work in the various southern states: Dr. Clopper has directed the field work in the New England states, Iowa and Illinois, has assisted with the general work of the New York office, and in addition, has given considerable time to the movement initiated by the National Conference of Charities and Correction to develop a National Children's Charter; Mr. Swift remains in charge of the field work in the Carolinas, investigating conditions, interviewing public officials, educators and others, and on August 1, Miss Eunice Sinclair was engaged to assist him in the Carolinas; the work of Mr. Hine has been chiefly in the southern and western states, investigating conditions and securing photographs. He has directed the work of the Exhibit Department, including the preparation of our exhibit at the Panama-Pacific International Exposition. He has also given considerable time to a study of child labor in agriculture, especially in truck gardening and beet sugar fields.

Of all the children from 10 to 15 years of age reported at work in gainful occupations by the latest United States Census, 72 per cent are in agricultural pursuits. Little or nothing is known of the conditions under which they work. The Census reports a quarter of a million of these children as "farm laborers working out", presumably employed by persons other than their own parents. Are they being overworked, injured by the many dangerous machines now used on farms, or kept away from school? Only through a careful and prolonged investigation can these questions be answered. The National Child Labor Committee has made isolated studies of conditions in agriculture in recent years: the inquiries into child labor on cranberry bogs, in strawberry fields and tobacco farms, for example, but nothing comprehensive has ever been undertaken. This year agents have investigated

the interference of farm work with school attendance in Georgia, Maryland and Colorado, in connection with the cultivation and harvesting of cotton, berries and sugar beets. Their findings clearly show the need of a systematic inquiry into this great field of child labor.

III. Eleventh Annual Conference

The Annual Conference this year was held in two parts in order to meet in Washington while Congress was in session to promote the campaign for the federal bill, and also to participate in the Panama-Pacific International Exposition in San Francisco. Part I. convened in Washington, D. C., January 5 and 6, 1915, and the general topics of the meeting were Federal Legislation and A National Children's Charter. Twenty-four states were represented at the conference by 218 delegates.

Part II. was held in San Francisco, May 28-31, 1915, by invitation of the Child Labor Committee and Juvenile Protective Association of San Francisco. The topic of the meeting was Child Labor a National Problem. Federal Legislation, A Charter for Childhood, and Child Labor in the West were the principal subjects discussed. The opening session was a mass meeting on the Exposition Grounds. One hundred and sixty-eight delegates registered from 18 states.

The proceedings of the conference were issued as follows: Part I., Volume IV., No. 1, of the quarterly Child Labor Bulletin, May, 1915; Part II., Volume IV., No. 2, August, 1915.

IV. Children's Charter

There is no central source of information or formal agreement on child welfare work and methods in this country. The advice and cooperation of our agents and officers in the handling of general child welfare problems as well as of matters pertaining to child labor, are constantly sought by social workers. These facts have suggested the advisability of preparing a general statement of the principles underlying the several divisions of child welfare work, a statement that would include a description of the recognised methods of dealing with general problems and of the machinery needed to carry out the principles and methods recommended, with

a view to its use as a guide to securing some degree of uniformity in state child welfare laws. Such a statement would be a basis for a children's code. It would be more than a charter, but perhaps the word, charter, comes nearer to defining it than any other.

At our Washington Conference in January, and again at the meeting in San Francisco this year, this project was discussed. A committee of the Board of Trustees of the National Child Labor Committee was appointed to promote the formulation of a Children's Charter. Shortly afterwards so much interest was shown in this movement at the National Conference of Charities and Correction at Baltimore that a special meeting was held, the outcome of which was the creation of a commission charged with the development of the charter idea. C. C. Carstens of Boston was chosen as chairman, and Mrs. Martha P. Falconer, Hastings H. Hart, Roger N. Baldwin, and E. N. Clopper as members of this commission with power to add to its membership representatives of all the various agencies for child welfare, and to proceed with the working out of the charter. The committee of the Board of Trustees of the National Child Labor Committee has taken no action since the creation of the commission at Baltimore, as we deem the commission admirably designed to handle the whole subject.

V. Child Labor Day

The fourth Sunday in January, (January 24) was observed as Child Labor Day and our material was circulated through the cooperation of clergymen, college presidents, city and state school superintendents, principals and teachers, social service federations, women's clubs, secretaries of Young Men and Young Women's Christian Associations, and by members of our Committee. Our records show that 8,698 sets comprising 22,232 separate pamphlets were distributed in preparation for Child Labor Day. This day has been assigned to the National Child Labor Committee by the Federation of Churches, and next January the twenty-third will be Child Labor Sunday, while Saturday, January 22, will be taken by Jewish congregations and others observing Saturday; and Monday, January 24, by schools and colleges.

It is especially desired that our membership should bring this matter to the attention of local educators, clergymen and others and seek to have the day observed in every city.

VI. PUBLICITY

The past year has seen our first systematic attempt to secure the cooperation of our membership in interesting the newspapers in our work. In reply to our appeal for help in connection with the campaign for the federal child labor bill, 416 members offered to interview personally at least one of the editors of their home towns, and the striking increase in returns on newspaper material despatched through these 416 members has proved again that the greatest strength of the Committee lies in the active interest of its membership.

We have renewed our efforts to interest public libraries in the Committee's work, with the result that practically every public library now has at least one of the National Child Labor Committee's publications upon its shelves and a substantial number are regular subscribers to the CHILD LABOR BULLETIN.

The BULLETIN has been issued four times as usual. Thirteen pamphlets were published and four appeal leaflets, besides a special federal leaflet and 15,000 copies of the text of our federal bill. These publications aggregate a total of 4,238,800 pages.

This excellent showing has been due to the able management of Anna Rochester, Publication Secretary. We were unfortunate in having received the resignation of Miss Rochester on September 1, when she became Secretary to the Chief of the Federal Children's Bureau at Washington. The administration of this department has been placed in the hands of her assistant, Florence I. Taylor.

VII. EXHIBITS

Two new exhibits have been prepared this year under supervision of Mr. Hine, Exhibit Director, and we now have four large exhibits, four suitcase exhibits, and one consisting of homework articles. The main feature this year has been the large exhibit stationed at the Panama-Pacific International Exposition. This has a prominent place in the Education Building, and is receiving visitors from all parts of this and other countries, thus reaching a wider audience than ever before. We also have a large exhibit at the Exposition at San Diego, Cal. Exhibits have been before legislative sessions, educational gatherings, etc., in 49 cities and 21 states. During the entire year we have had the free use of a vacant store at 71 West 23rd Street, New York City. Printed matter has been distributed at all our exhibits and memberships have been obtained.

VIII. Official Meetings

The Sixth Annual Meeting of the National Child Labor Committee Corporation was held at the Committee's headquarters on October 20, 1914. Eight members, the Secretary for the Southern States and General Secretary were in attendance.

The following Trustees were elected for a term of five years to succeed themselves: Miss Jane Addams, Francis G. Caffey, and William E. Harmon. The resignation of Paul M. Warburg as corporate member and trustee was presented and regretfully accepted. Howell Cheney was elected to fill Mr. Warburg's unexpired term ending in 1917. The resignation of Mrs. Caroline B. Alexander Wittpen was presented at the meeting on January 26, 1915 and the vacancy has not yet been filled.

IX. Advisory Committee

The Advisory Committee is composed of 34 members representing 23 states and the District of Columbia. We regret to record the death of one member, Mr. Frederick C. Crane, on January 26, 1915. Mr. Crane has for many years been one of the most active and staunch supporters of the work of the Committee, and gave many valuable business suggestions. As a farewell gift to the Committee he generously donated $2,500.

X. Membership

At the beginning of the Eleventh Fiscal Year a decided change in financial policy was inaugurated. The mailing of very large appeals, which lately have not paid in proportion to effort expended, was discontinued and more personal work substituted. This cut in office work has made it possible for the Membership Secretary, Miss Eschenbrenner, to spend the year working up new interest in Minnesota, Illinois, Nebraska, Colorado, Utah, California, District of Columbia, Wisconsin and Iowa. She has added 790 new members to the Committee.

In the past year, with its unparalleled demands on the general public, it is encouraging to report that 77.76 per cent of our members renewed their subscriptions, and that many increased the amount of their gifts. The great falling off in support was found not among the small subscribers, but among those giving $100 or more.

The total number of new members enrolling during the Eleventh Fiscal Year was 1,923, contributing $9,710.28. 6,783 former members renewed their subscriptions for the year, amounting to $50,751.30.

XI. TREASURER'S REPORT

FOR THE YEAR ENDED SEPTEMBER 30, 1915

As examined, audited and found correct by Haskins & Sells, New York, Certified Public Accountants.

DEBITS

CASH ON DEPOSIT, OCTOBER 1, 1914		$ 313.35
RECEIPTS:		
Paid Subscriptions	$61,559.58	
Sales of Publications	1,023.04	
Sales of Photographs and Slides	118.40	
Rental of Slides and Exhibits	179.28	
Interest on Bank Balances	28.50	
Refunds:		
Investigations	1,270.45	
Exhibits	931.81	
Miscellaneous	120.85	65,231.91
Total Debits		$65,545.26

CREDITS

EXPENSES:			
Salaries:			
Administrative	$8,650.00		
Clerks and Stenographers	9,590,78	$18,240.78	
Rent		2,616.94	
Printing		5,330.15	
Stationery and Office Supplies		835.81	
Postage		2,651.12	
Telephone and Telegraph		633.11	
Miscellaneous General Expenses		406.79	
Investigations		16,507.12	
Drafting and Supporting Legislation		4,937.59	
Traveling		1,881.22	
Exhibits		3,807.51	
Purchase of Material—Child Labor		276.55	
Publicity		6,325.43	
Advertisements—Miscellaneous		8.90	64,459.02
FURNITURE AND FIXTURES			217.15
Total Credits			$64,676.17
CASH ON DEPOSIT, SEPTEMBER 30, 1915			$ 869.09

XII. Addresses and Conferences

The following table shows the number of addresses that have been delivered during the year by the members of the staff and gives a more general idea of the field covered than previous lists have done. (Under the heading "Other members of staff" are included addresses by: Mr. Bremer, Mr. Jones, Miss Taylor, Miss Wilkie and Miss Renton.)

STATE	Mr. Lovejoy	Dr. McKelway	Dr. Clopper	Mr. Swift	Miss Kochersperger	Mr. Hine	Other Members of Staff	TOTAL
Alabama	.	.	.	.	.	.	6	6
California	4	.	3	3	10	2	.	22
Colorado	5	.	.	.	2	.	.	7
Connecticut	.	.	1	.	.	.	3	4
Delaware	2	.	.	.	.	.	.	2
District of Columbia	1	7	1	2	8	4	.	23
Illinois	18	.	.	.	3	.	1	22
Indiana	3	.	1	.	.	.	.	4
Iowa	.	.	.	.	4	.	2	6
Kansas	3	.	.	.	.	.	.	3
Kentucky	1	.	.	.	.	.	.	1
Maryland	1	7	1	.	.	.	.	9
Massachusetts	2	.	.	.	.	.	.	2
Michigan	7	3	.	.	.	.	3	13
Minnesota	8	.	.	.	14	.	.	22
Missouri	1	.	.	.	.	.	.	1
Nebraska	.	.	.	.	16	.	.	16
New Jersey	2	2	4	.	.	.	3	11
New York	30	.	13	.	.	3	15	67
North Carolina	.	.	.	13	.	.	.	13
Ohio	6	.	2	.	.	.	.	8
Pennsylvania	7	1	2	.	.	.	.	10
Rhode Island	.	.	1	.	.	.	.	1
Texas	.	.	.	.	.	1	.	1
Vermont	1	.	.	.	.	.	.	1
Virginia	.	1	.	.	1	.	.	2
West Virginia	.	.	.	.	.	.	8	8
Wisconsin	1	.	1	.	.	.	.	2
	109	21	30	18	58	10	41	287

In addition to the addresses delivered by members of the staff, Mrs. Ira S. Wile and Mrs. Bernard Naumberg of New York City made 20 speeches, 17 in New York and three in New Jersey.

Important Conferences Attended by Representatives of this Committee

States	Number
Alabama	2
California	1
District of Columbia	7
Illinois	5
Indiana	1
Maine	1
Maryland	3
Michigan	2
Nebraska	1
New Jersey	1
New York	3
Ohio	1
Pennsylvania	1
South Carolina	1
Virginia	2
West Virginia	1
Total	33

XIII. Travel

	Miles
Owen R. Lovejoy	25,110
A. J. McKelway	6,110
E. N. Clopper	16,643
W. H. Swift	12,376
J. J. Eschenbrenner	15,306
L. W. Hine	12,700
H. M. Bremer	8,213
H. H. Jones	6,106

The Secretary desires again to express appreciation of the time and attention given to this work by the members of the Board of Trustees, and to commend the devoted spirit in which the secretaries and office staff have performed their duties. The persistence of our contributing members at a time when other calls are urgent, and their determination to see a solution of this problem, are the most gratifying contribution to the success of our work.

Respectfully submitted,

Owen R. Lovejoy,
General Secretary.

Constitutionality of the Federal Child Labor Law

Nathan William MacChesney

A more vital interest is being taken each succeeding year in the public welfare and safety of our nation and its people. Laws are being passed more abundantly than ever before to rid the country of harmful social influences. Health and public safety laws have usurped more than the ordinary amount of the time of state legislatures because those subjects have long been thought to belong peculiarly within the province of the states.

In a large degree this is true, but in many instances the harmful influence upon the people has been considered too widespread for the states themselves to cope with and the national government has taken up the burden. The Supreme Court of the United States has upheld the laws passed in these various cases in every instance where it was certain that the welfare of the people of the nation would be benefited and where the law could be upheld on constitutional grounds. A recent illustration is found in the decision of the white slave cases (1) passed upon by the Supreme Court in 1913, and previous to that, the federal workmen's compensation law (2).

These cases were in a large degree based upon the decision in the lottery cases (3), which was a decided step towards strengthening the "police power" impliedly given to the federal government. The lottery case has decisively proven that Congress has a power, a "federal police power," to prohibit transportation of articles affecting the public morals or health, and Congress has recently passed upon several cases approving this power (4).

That there is a tendency to increase the scope of the interstate commerce clause of the Constitution there can be no doubt. The tendency is a natural one, and a necessary one, if we are to keep in touch with the ever increasing complexity of modern life. As Chief Justice McKenna said in the white slave cases,

(1) Hoke vs Smith (227 U. S. 308)
(2) Howard Administrator vs L. C. Ry. (207 U. S. 463)
(3) The Lottery Cases (188 U. S. 321)
(4) Hoke vs Smith Supra. Hipolite Egg Case (220 U. S. 45)

> "Congress is given power to regulate Commerce with foreign nations and among the several states. The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary."

In those things which concern the nation at large rather than merely the states, the people are inclined to look more and more to the federal government than to the individual state for support and succor. Therefore we have learned to apply the spirit and intent of the people to the Constitution, and if a prohibition exists in the Constitution that can be applied to certain facts and circumstances it will be held to extend to acts "even if not within the literal terms of the Constitution, if they are within the spirit." The harmful results which it was the purpose of the Constitution to prohibit will be prohibited (5). In Gibbons vs Ogden (6) it is said that the power "to regulate commerce is the power to prescribe the rule by which it is to be governed."

The powers of Congress must necessarily be enumerated; and one of its enumerated powers is "to regulate commerce with foreign nations, among the several states and with the Indian tribes." "The government of the United States can claim no powers which are not granted by the Constitution" (7). While these have always been limited, yet in their exercise, Congress uses a discretion which necessarily must be considered a part of the powers themselves. Judge Harlan said in the lottery case,

> "While our government must be acknowledged by all to be one of enumerated powers (8), the Constitution does not attempt to set forth all the means by which such powers may be carried into execution. It leaves Congress a large discretion as attempt to set forth all the means by which such powers may be to the means that may be employed in executing a given power."

In addition to this discretion, Congress is paramount within its enumerated powers.

---

(5) U. S. vs The American Tobacco Co. (221 U. S. 106)
(8) McCullough vs Md. (4 Wh. 316)
(7) Gibbons vs Ogden, supra.
(6) (9 Wh. 1)

"The states, however, must recognise this limitation, that the federal power is paramount within the scope of its enumerated powers." (9)

Again referring to the lottery case we find this expression,

"A legislative power must be given 'That discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.'" (10)

The power to regulate commerce among the several states is supreme and plenary. It must be considered in its full scope as having control over all the "external concerns of the nation and to those internal concerns which affect the states generally; but not to those which are completely within a particular state which do not affect the other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government." (11)

This reservation of power to the states was intended to be exercised only when federal control did not operate and on subjects "which are completely within a particular state" and "which do not affect the other states."

This language used by the greatest constitutional lawyer who ever sat upon the Supreme Court bench is pregnant with meaning and serves as a key to open the door to the full exercise of the power and scope of the commerce clause of the Constitution. And that clause is limited only by the Constitution itself as was expressed by Chief Justice Marshall in Gibbons vs Ogden:

"This power like all others vested in Congress is complete in itself and may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution."

(9) See Hannibal R. vs Husen (95 U. S. 465); Passenger Cases (7 Howard 283); Brown vs Md. (12 Wh. 419)
(10) The Lottery Case (188 U. S. 355)
(11) Gibbons vs Ogden (9 Wh. 1)

In the lottery case the effect upon the public morals was the point particularly dwelt upon. The effect does not take place until after the transportation, but it nevertheless was held injurious to the public morals and sufficiently connected with the "commerce" or "intercourse" between states as to be prohibited even though the evil effect was not caused during and at the time of the transportation. Hence the court disregarded any direct effect the transmittal might have on commerce considered as transportation or intercourse and looked to the effect on the morals of the people; and in equal degree Congress can disregard the effect upon the manufacture and transportation of articles produced by child labor and look towards the effect upon the morals of the people. The indirect effect is not any further removed from "intercourse" or "commerce" in the one case than in the other.

> "The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically admitted to its charge." (12)

That Congress has power to legislate in regard to articles to be transported by interstate commerce before as well as after transportation starts is sufficiently borne out by the case of Reid vs State of Colorado (13), where power is given to inspect cattle before their shipment.

One of the main difficulties found in the federal child labor law is the opposition of the states on the ground that the standards fixed by the proposed law would ruin business. It would not serve to ruin legitimate business because the business itself would not be affected, but only the methods used in employing persons to do that business. A uniform law in this regard would be a help to legitimate business and serve as a wet blanket to the unfair means now followed by many states of employing children at low wages.

The argument is advanced that if such a measure is considered to be within the inhibition of the commerce clause there would be no limit to the power of the federal government to control productive processes heretofore controlled under the police power of the states; that if a federal child labor law is a proper regulation of commerce then the hours of labor both of men and women, industrial insurance, industrial diseases, the minimum wage, factory legislation, machinery safeguards and in fact the whole industrial field will be let into federal legislation through the loophole.

(12) In re Rahrar (140 U. S. 545, 562)
(13) (187 U. S. 137)

A few of these matters do need federal regulation, as for instance the hours of labor of women, and wages of women and children, and the constitutionality of such laws no doubt could be upheld.

It is further argued that such a law might be extended so as to forbid the employment of union or non-union laborers, foreigners, or in fact any one whose employment might be brought under the head of interstate commerce, and that such power would become one, not of law, but of expediency. But so far as extending the clause to the question of union labor is concerned, the argument can be readily answered. In view of the fact that child labor is reprehensible in character and to such a degree as to become a national menace we find a clear distinction between such employment and the employment of foreigners or union and non-union labor for the reason that unlike child labor, the employment of a non-union laborer or foreigner can not be inherently bad nor affect the morals or physical health of the people. The question of expediency can not arise in choosing between the two.

Another argument put forward is that should such a regulation be found within the purview of the commerce clause it would become a regulation of manufacturing and mining as well as of commerce. But if we analyse the question thoroughly it is apparent that this is not true, for although three is an incidental regulation of manufacture, since manufacturing includes "employing labor" in addition to actually producing goods, yet there is no regulation of the act of manufacturing nor of mining. It may be that the distinction is fine but not so much so as to be imperceptible.

The word manufacture primarily means the "act of making" or "working upon" articles for use from raw materials, by giving such materials new forms, qualities, and properties by manual or mechanical labor. To say that extending the commerce clause to govern child labor would be including manufacturing as well as commerce does not necessarily follow, for child labor is not a part of the act of manufacturing but a method or means used towards the act. To prohibit the use of child labor on articles shipped in interstate commerce would not be to prohibit the act of manufacturing, but it would prohibit the means or methods or conditions used.

Perhaps it can not be stated that Congress has a direct power over such conditions in the process or means of manufacture of articles for interstate commerce, but if the latest

adjudications such as the white slave and pure food cases throw any light at all upon the subject of the commerce clause, surely such power can encompass laboring conditions, considering the part they play in interstate commerce with regard to the morals and safety of the people.

Congress can not be said to have a direct control over the effects of harmful food or drugs upon the public. A distinction can easily be found between those cases previously held directly to affect commerce and the recently decided pure food case, for in the latter case the effect was not a direct one upon commerce but on the people who depend upon commerce to bring such products to them, and by the use of "commerce" I mean "transportation" or "intercourse" as defined in Gibbons vs Ogden.

If such extension is made by our highest court in favor of that part of the public who consume articles carried in interstate commerce, there is no reason why it should not favor that part who produce articles for use in interstate commerce. They are each part and parcel of the same public, and if Congress can legislate in one direction in favor of that public it can also legislate in the opposite direction, for the effect either way is upon the public.

If the child labor law can be sustained it seems it will have to be upheld under the police power impliedly given to the federal government. We might start from Gibbons vs Ogden, the beginning of the adjudications arising from the commerce clause, and cite all the decisions up to date, but after that is done we will not have proceeded far because conditions that have arisen and have been dealt with in the past are not likely to arise again, inasmuch as the courts have to deal with new conditions. The commerce clause as applied to old conditions and to old cases would serve only in a general way to throw light on existing conditions.

The Supreme Court set a precedent with a five to four decision in the lottery case. From this decision we can see that the question was a live issue and was sharply contested. The effect of that case was to prohibit harmful objects being sent from state to state by express companies. The extent of the decree was to include in the prohibition of the commerce clause and the federal police power, articles which did harm to the general public, after transmittal, not in the transmittal.

While it is admitted that a distinction can clearly be seen between the harmful effect of a harmful object and the harmful effect of a non-harmful object, yet I contend that the argument can not be confined to the harmfulness of the article itself. The argument must include the widespread evil inflicted upon the people in general through the free use of unfair trade methods. Clearly Congress has legislated on articles of commerce harmful in their effect upon the morals of the people. Considering that when Congress legislates it can legislate as to the whole subject matter and that its control over its enumerated powers is complete, paramount and plenary, it can not overlook the evil effect the employment of children in the manufacture of articles for interstate commerce has upon the morals of the people.

There is no reason why the argument used by Mr. Justice White in the employers' liability case can not be used in this connection. There the argument was advanced by the appellee that the relations between master and servant could not be regulated by Congress because this power was not specifically granted to it. It was a purely local measure, he argued, and therefore Congress could not interfere in such relations. In that case Justice White said:

> "But we may not test the power of Congress to regulate commerce solely by abstractly considering the particular subject to which a regulation relates, irrespective of whether the regulation in question is one of interstate commerce. On the contrary the test of power is not merely the matter regulated but whether the regulation is directly one of interstate commerce or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce. We think the unsoundness of the contention that because the act regulates the relation of master and servant it is unconstitutional, because under no circumstances and to no extent can regulation of such subject be within the grant of authority to regulate commerce, is demonstrable. We say this because we fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, and therefore are within the grant to regulate that commerce, or within the authority given to use all means appropriate to the exercise of the powers conferred. To illustrate: Take the case of an interstate railway train, that is a train moving in interstate commerce and the regulations of which, therefore, is in the nature of things and regulations of such commerce. It can not be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the rela-

> tions of the servants engaged in such operation between themselves, that it is not a regulation of interstate commerce. This must be, since to admit the authority to regulate such train and yet to say that all regulations which deal with the relation of master and servant engaged in its operation are invalid for want of power would be but to concede the power and then to deny it, or at all events to recognise the power and yet to render it incomplete."

It is true that the relations of employer and employee or the relations of employer and child employee, standing as such, can not be regulated as citizens and subjects of the same state, but considered in their direct relations with interstate commerce, the employee on interstate carriers and children producing goods for interstate use, they are within the commerce clause of the Constitution. Employers liability cases (supra).

That in the interpretation and construction of the commerce clause of the Constitution the court in its decision of cases is not entirely governed by things and persons actually within and engaged in interstate commerce, but must of necessity include subjects wholly without interstate commerce, is shown by the following paragraph from Howard vs Illinois Central (207 U. S. 498).

> "The act then being addressed to all common carriers engaged in interstate commerce and imposing a liability upon them in favor of any of their employees without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity include subjects wholly outside of the power of Congress to regulate commerce."

This view, although dissented from by Justices Harlan and McKenna who did not concur in its interpretation as applied to all subjects immediately concerned with interstate commerce, shows with striking clearness the present attitude and progress of the Supreme Bench on questions involving the commerce clause and breaks ground for the clear and undeniable declaration made in the Hipolite egg case that,

> "The power given to Congress by the constitution over interstate commerce is direct, without limitation and far reaching."

The theory and the law of the employers' liability case was upheld in a later case, the Illinois Central Railroad Company vs Behrens, decided April 27 of this year by the Supreme Court.

While the employers' liability case was decided more from the fact that it was a direct regulation of commerce, we find in the pure food and the white slave cases better ground for argument in favor of a federal child labor law, for undeniable language was used by the court in upholding the power of Congress in regard to police regulations.

And in touching upon this police power, Mr. Justice McKenna in the white slave cases, in an opinion to which there was no dissent, states the following :

> "The principle established by the cases is a simple one when rid of confusing and distracting considerations, that Congress has power over transportation 'among the several states'; that the power is complete in itself and that Congress as an incident to it may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulation. (Gloucester Ferry Co. vs Penn. 114 U. S. 196, 215; Cooley's Constitutional Limitations, 7th ed. 856). We have no hesitation, therefore, in pronouncing the act of June 25, 1910, a legal exercise of the power of Congress."

The view here stated was sustained in the case of Wilson vs W. S. (232 U. S. 563) in an opinion by Mr. Justice Pitney.

This rule makes the proposition a simple one in its application to interstate commerce, following the theory that Congress can have a police power or at least "may adopt means" that have "the quality of police regulations". The statute being a remedial measure should be liberally construed. (14)

A prohibitory regulation by Congress of child labor used on products of interstate commerce would be one having the "quality" of a police regulation. No set of words would come closer in defining the status of a child labor law than those above quoted. It is a national menace that should be dealt with by a police regulation directed to the health, safety and morals of the people whose labor is employed upon products of interstate commerce, and should be directed and controlled by the federal government.

(14) (131 U. S. 1)

Do Our Obligations Cease When We Pay the Coal Dealer?

If we think our debt is paid when we get his receipt, we never spent an hour with a trapper boy in a damp, underground chamber, or watched with dust-blinded eyes as the breaker boys snatched slate from the roaring, sliding coal. Had we done that, we would cry out for something to be done.

I pay the Coal Dealer. What Then?

The Federal Child Labor Bill is yet to be passed. When Congress passes this bill no boy of fourteen will spend bright days in a cold, lonely mine or sit in backbreaking position over a chute, breathing in the dust.

The National Child Labor Committee can get the bill through this Congress if their friends stand by them. They need the support of a larger membership—money to tell people about the children who work in mines, quarries, factories, canneries and workshops.

To strengthen the Committee, I will get a friend to sign this slip.

To V. Everit Macy, *Treasurer*
105 East 22d St., New York

My { contribution / membership subscription } of $.....is sent you for the National Child Labor Committe's campaign for little girls and boys.

Associate Membership		$2
Contributing	"	$5
Sustaining	"	$25
Donor	"	$100

Signed .....

Address .....

City .....

Do You Want a Federal Child Labor Law?

WRITE THREE LETTERS TODAY

Now is the time to show your Senators and Representatives that you are in earnest about a federal child labor law.

The bill that passed the House of Representatives in February, 1915, will be reintroduced immediately after Congress convenes. It prohibits the shipment in interstate commerce of factory or cannery products in the manufacture of which children have had a part (1) Under 14 years of age or (2) Under 16 at night or (3) Under 16 for more than 8 hours a day. It also excludes the products of mines and quarries where children under 16 are employed at any time.

This bill ought to pass **both** Houses this time but it won't unless all our members do their part.

We Ask You To Do Three Things

1. Write to your Senators and Representative, bespeaking their interests in the child labor bill when it is introduced.
2. Ask us for copies of our new federal pamphlets (Nos. 248, 251 and 252) to use among your friends.
3. Help us to reach **one** newspaper in your home town by telling us we may send you from time to time material for the editor.

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

331.35
N28c

The Child Labor Bulletin

In Two Parts FEBRUARY 1916 Part I

THE BEET-WORKER

PUBLISHED BY

National Child Labor Committee

The Child Labor Bulletin

Volume Four
Number Four
In Two Parts

FEBRUARY, 1916

Issued Quarterly
Price $2 per Year
Part I

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1913, at the Post-office at New York, N. Y., under the Act of August 24, 1912

THIS NUMBER FIFTY CENTS

COPYRIGHT 1916
BY THE
NATIONAL CHILD LABOR
COMMITTEE

PRESS OF CLARENCE S. NATHAN, INC., NEW YORK.

CONTENTS

PART I

	PAGE
EDITORIAL NOTES	168
"AGED 12, HAS WORKED TWO YEARS"	171
CHILD LABOR IN THE SUGAR-BEET FIELDS OF COLORADO. *Edward N. Clopper and Lewis W. Hine*	176
COURT DECISIONS AFFECTING CHILD LABOR. . . . . *Sophie D. White*	207

EDITORIAL NOTES

THE CHILD LABOR CONFERENCE.

The Twelfth Annual Conference on Child Labor held at Asheville, N. C., during the early part of this month was one of the most successful conferences in the history of the Committee. Convening the day after the Keating-Owen bill passed the House of Representatives, it had a definite issue before it, which directly concerned the citizens of the state and which brought them out in large numbers. The audiences were not composed of northerners from the neighboring winter resorts but were southern almost without exception, and the majority of the men and women who attended came, not from the wealthier homes in the city, but from those of the working classes. The labor unions gave their enthusiastic support to the meetings, the Normal Institute sent delegations, and the ministers, school superintendents, teachers and newspapers gave their hearty support. The many able speakers on the program from the southern states made it clear to the conference that public opinion in the South to-day is not with the special interests who have been posing as its spokesmen. As Dr. R. F. Campbell of Asheville said, "It is our fault that our representatives have not voted for child labor legislation. We have not let them know what we want them to do, but the manufacturers have and they have done what the manufacturers wanted." The majority of the men and women of the South are with the North in their desire to see child labor abolished and will bring all possible pressure on their Senators to convince them that their future seats in Congress depend on whether they vote "Yes" or "No" on the Keating bill. The proceedings of the conference will be published in the May BULLETIN.

As we go to press, the Keating bill is in the hands of the Senate Committee on Interstate Commerce and the indications are that

THE FEDERAL BILL.

it will be favorably reported. The chairman of the Committee, Senator Newlands, stated to the opponents of the bill who appeared at the hearings that there was no doubt the present Congress would pass some bill for the regulation of child labor. From this statement it is evident that the Democratic majority in the Senate is committed to a federal child labor bill and the only difficulty will be in bringing the bill to a vote if its opponents are inclined to filibuster. If they can hold up the vote on it until the preparedness measures come over from the House, the bill will be seriously delayed. But as the present Congress does not go out of office until March 4, 1917, and as the bill passed the House in less than two months after it was introduced, there is every chance that it will pass the Senate during the next twelve months.

The only opposition to the bill at the House and Senate hearings was offered by the cotton mill men of North and South Carolina, as was the case last year. They are convinced that the federal bill is aimed directly at their industry and were eager to prove to the committees that a cotton mill is "an orphanage, a reformatory, a health resort, a college and a trip to Europe all in one," as Edgar Gardner Murphy said fifteen years ago of similar arguments by cotton mill men who wished to employ children in their mills.

CHILD LABOR DAY.

January 23, Child Labor Day, was widely observed this year. From newspaper clippings we have learned that it was recognised in at least 41 states, and although our list of churches and organisations is far from complete, we know that Sunday-schools, women's clubs, Y. W. and Y. M. C. A.'s, Juvenile Protective Associations, Charities Associaciations, Normal Schools and colleges joined in observing the day. In New York City, alone, we know of 16 clergymen who conducted special child labor services on January 23. In Nebraska the State Superintendent of Schools sent a letter to every local superintendent asking him to observe Child Labor Day. In most cases the observance of the day consisted in the endorsement of the federal child labor bill and undoubtedly this widespread interest in the bill had a great deal to do with its prompt passage by the House on February 2. Perhaps it is unfortunate that another Child Labor Day is not coming just before the Senate votes on the

measure! However we know that our members and friends will remind the Senate that the bill must be passed, even though no special day is set for such action.

NEW PUBLICATIONS.

Since November the Committee has published nine pamphlets of which one, "Why You Should Support the Keating-Owen Bill" (251) has gone into three editions. We published two pamphlets, the one mentioned above and "Who Made What You Buy?" (252), especially for Child Labor Day, as well as two new Child Labor Day Programs (253, 254). A reprint of Mr. Lovejoy's annual report (255), and of Mr. MacChesney's article on the constitutionality of the federal bill, from the last BULLETIN, together with one by Mr. Parkinson from the May BULLETIN (250); eight pages of personal endorsements of the Keating bill by men and women of national reputation (256); the text of the bill (257); and quotations from newspaper editorials on the bill (258), complete the list of new publications. We find that an increasing number of our members wish to see all our publications, pamphlets as well as BULLETINS, and so we take this opportunity to remind you that whereas we are glad to send all our publications to anyone who signifies a desire to see them, we do not send them without an order to that effect. Between the Scylla of those who feel that we deluge them with material and the Charybdis of those who think we do not keep them in touch with our activities, we are sailing a rough sea, and we leave it to you to advise us which course to take in your case.

AMERICAN CHILD WELFARE CONGRESS.

The place of meeting of the First American Congress on Child Welfare which is to be held in the Argentine Republic next July has been changed from Tucumán to Buenos Ayres. The latter city is more easily reached from the United States and it is hoped that this change in place will make it possible for more representatives from this country to attend the Congress. The National Child Labor Committee has a number of bulletins issued by the executive committee of the Congress giving an outline of the program and the personnel of the section committees which will be mailed upon request of anyone interested in the Congress, together with information concerning transportation rates and routes, if desired.

"AGED 12, HAS WORKED TWO YEARS"

(These notes made by one of our investigators in 9 North Carolina mills, November and December, 1915, show that the photographs, taken within two years, still depict conditions.)

Some of the children under 13 now at work

Melton ——, aged 11, has worked about 1 year, earns 33½ cents a day.

Lloyd ———, aged 10, has worked 9 months, earns 30 cents a day.

Francis ———, aged 12, has worked irregularly for 3 years.

Waylon ——, aged 11, has worked 9 months, earns 30 cents a day.

Minnie ——, aged 12, has worked 3 years, earns 70 cents a day.

Curtis ———, aged 12, has worked 1½ years, earns 80 cents a day.

Maggie ——, aged 12, has worked 1 year, earns 50 cents a day.

Ida ————, aged 12, worked in —— and —— before coming here.

Walter ——, aged 12, has worked 3 weeks here, having worked before in the —— Mills.

Ray ————, aged 12, has worked 1 year, earns 50 cents a day.

Gertie ———, aged 11, has worked 2 weeks.

Johnnie ——, aged 12, has worked 6 months, earns 50 cents a day.

Homer ——, aged 12, has worked 1 year.

Effie ————, aged 12, has worked about 1 year, earns 60 cents a day.

Carrie ———, aged 12, has worked 10 months, earns about 40 cents a day.

David ———, aged 12, youngest of 5 children all of whom work, earns 25 cents a day.

Some cases of night work

Belle ———, aged 12, has worked 6 months, earns 60 cents a night.

Lotta ———, aged 11, has worked "off and on" for 2 years. Though in school now, works Friday nights, earning about 60 cents a night.

John ———, aged 11, has worked 2 years, earns 50 cents a night.

Riley ———, aged 14, has worked 3 years, earns 83 cents a night.

Susanna ——, aged 15, has worked 4 years, earns $1 a night.

Goldie ——, aged 13, has worked 4 years, earns $1 a night.

Some children who began work before the legal age

Theodore —, aged 13, has worked 3 years.

Byrd ———, aged 15, has worked 5 years, earns 75 cents a day.

Foster———, aged 13, has worked 2 years, earns 50 cents a day.

Rosa ———, aged 13, has worked 3 years, earns 50 cents a day.

Arthur ——, aged 13, has worked 2 years, earns 50 cents a day.

Belle ———, aged 14, has worked 3 years here, and prior to that in mill at ——, earns 50 cents a day.

John ———, aged 14, has worked 3 months here, prior to that 3 years at ——.

Nezzie ——, aged 13, has worked 2 years, earns 75 cents a day.

Notes on mills and special cases

Found no cases of desperate poverty here. Operatives speak very highly of mill authorities, and appear reasonably well-satisfied, though some complain about low wages. Houses are reasonably good. Counted two girls and five boys apparently under age in mill, two of the latter being extremely small—fairly babies, they did not come above my elbow. Am not sure they were on the payroll, but they were at work while I was in the mill.

This is a thoroughly modern mill. The building is large and light with good floor space. The houses are comparatively new and in most excellent condition. The employees, almost to a man, declared themselves well satisfied. The mill works too many young children, although I was told by a number of operatives that none under 13 were allowed. In going through the mill I counted five girls and four boys whom I considered less than 13 and the data which I secured concerning all these proved me to be right.

This mill has only about 25 operatives at present, and I saw no young children at work. It is a wooden-frame building, very low-ceiled, dark and crowded. The floor was filthy and so worn that I tripped several times in walking through. The homes are absolutely wretched, with roofs leaking, floors falling in and steps broken. The people are miserable. I think none stay there who can get away. There appears to be no scale of wages, and what they pay is very low. The immorality among the people is unspeakably gross. Illegitimacy is prevalent in almost every family, and about half the people are of mixed blood, mulattoes and Croatians. There is no Sunday-School, and church services only once a month when a visiting minister

comes from ——. The school is two and a half miles away, consequently there is much illiteracy. In fact, only six children from the village attend, and these very irregularly. It seems incredible that such conditions can prevail anywhere.

I found one family that is worthy of special mention in that it served to illustrate the fact—disputed by many—that valuable citizens can be developed in the cotton-mill village. The father told me that years ago, during a prolonged illness of his wife, he fell into straightened circumstances and moved to a cotton-mill in order that he and the children might find employment. They lived for a while at ——, and while there his wife returned from the hospital. "I didn't like livin' there," said Mrs. ——, "but when you git in a cotton-mill it's like pullin eye-teeth to git away." It soon became apparent to the mother that the children could never gain an education while they remained there, and so, in spite of many difficulties, they managed to move to another town where the children had the benefit of a good school. "While I was packin' in came the super," said the mother, "an' he says to me, 'What are you leavin' for?' and I jus' tol' him straight, 'I'm leavin' so's my children can git an education, an' you know, sez I, that they can't git in this place.' He listened to me an' he didn't dispute it none, but he says to me, 'If you ever want to come back, Mrs. ——, don't you wait to write or nothin'. You jus' come an' I'll always have a place for you.' " However, they have never returned, but evidently made the most of their opportunities, and now there is only one child, the youngest daughter, living at home. She works in the mill, earning $1.25 a day, and the father works, earning the same amount. Another daughter is married and lives very comfortable in this village, her husband working in the mill. One of the sons

superintends the spinning and winding here; another runs a card-room in one of the —— Mills; another is superintendent of the —— Mills, at ——; another is a successful farmer in that town; another works in a roller mill at ——; and still another is proprietor of the flourishing little commercial hotel of that place, having his youngest brother for his chief assistant.

These children have one older brother who works, earning $1 a night. He is only 16 at present and has been at work for four years. There are two children younger than Gertie, and they have one boarder. The father, ——, is a painter. The children worked in ——, before moving here. The mother takes pride in the fact that all have worked at an extremely early age. She referred to Gertie as 'help-hand.' I asked her how she was paid, and she said, "Yes, ma'am, she's paid, but she ain't on the payroll. They let her pay go on her sister's for helpin' her."

Father does not work, probably owing to the fact that he has five children in the mill. There are two children younger than these and they have four boarders.

This mill works a number of children, but I think this includes all, as I counted only six girls and seven boys under size in the mill at the time of my inspection. The school building is very poor and they have only one teacher. Houses are in good condition.

Mr. ——, Superintendent here, gave me all assistance possible, and appeared in sympathy with the child labor movement. In regard to the federal bill he said, "I am in favor of the bill and do not doubt that Southern mills can afford to run under such a law. I should be glad to see the bill passed."

CHILD LABOR IN THE SUGAR-BEET FIELDS OF COLORADO

EDWARD N. CLOPPER, PH. D.,
Secretary for the Northern States
and
LEWIS W. HINE, PD. M., Staff Photographer

Child labor in agriculture has hitherto not received public attention because it has been generally assumed that the child on the farm is in every way more fortunate than the child employed in manufacturing, mining and trade, and consequently has relatively little or no need of protection other than that afforded by his parents. Indeed, in states whose child labor laws have a blanket provision forbidding the employment of children under a certain age in all gainful occupations, agricultural work is specifically exempted. As such exemptions are based merely upon this general assumption, it is opportune to inquire whether this kind of labor is altogether advantageous to the child or whether there are conditions connected with it which endanger his welfare and interfere with his proper development.

Because of the heavy demand for labor due to the absence of so many men in the army, the local school authorities in the farming districts of England, between September 1, 1914 and April 30, 1915, excused 3,811 children between 11 and 14 years of age from attending school so that they might devote their time to agricultural employment. In the midst of the greatest war of all history, the United States is happily at peace; are our children enjoying the full benefits of this peace, or are they bearing burdens beyond their strength and losing the opportunity for elementary education like these boys and girls of England, but without the justification that comes from the pressure of war?

Every decade the report of the United States Census on occupations has shown that the majority of our working children are employed in agricultural pursuits. This is strikingly brought out in the following table. The figures for 1890 are omitted because in the report of the Twelfth Census they are considered erroneous so far as they relate to agricultural pursuits.

TABLE A—NUMBER OF CHILDREN 10 TO 15 YEARS OF AGE REPORTED AS BREADWINNERS BY UNITED STATES CENSUS

YEAR	In all gainful occupations	In agricultural pursuits	Per cent
1880.....	1,118,356	721,029	64.4
1900.....	1,750,178	1,061,971	60.6
1910.....	1,990,225	1,431,254	71.9

Nearly three-fourths of our child laborers are engaged in agricultural pursuits, yet the movement for child labor reform, which has been so wide-spread and determined in the past quarter century, has not even touched this greatest field of all. It has resulted in protective legislation concerning employment in mines, factories, mills and mercantile establishments, but the only legislation which in any way protects children from premature or excessive work on farms is the compulsory education law, and this is effective only during certain hours of certain days for the school term—from five to nine months of the year. Moreover the greatest agricultural activity comes usually in the school vacation period when there are no restrictions whatever upon the labor of children on farms.

Of the total number of children from 10 to 15 years of age reported in 1910 as engaged in agricultural work, 1,157,464 or 80.8 per cent were farm laborers on the home farm, and 260,195 or 18.1 per cent were "farm laborers working out." The census enumerators were instructed to return children at work on farms for persons other than their parents, as "farm laborers working out," and more than a quarter of a million were so returned. The possibility of exploitation in this field, as indicated by these figures, is so great as to demand thorough investigation. That many of the laborers on the home farm also are daily required to do fatiguing work through long periods of seasonal activity, and are at the same time deprived of schooling, is beyond question, as this monograph reveals. Of the total number of farm laborers on the home farm and working out, from 10 to 15 years of age, 81.8 per cent were found in thirteen southern states. Their distribution among all the states is given in the following table. The total for Colorado is much less than the number of children 6 to 15 years old reported in this monograph as engaged in the single agricultural pursuit of sugar-beet culture; this is explained partly by the difference in the range of age but principally by the fact that the census data were collected as of one day—April 15—while the figures of this report embrace the children employed throughout the season.

TABLE B—FARM LABORERS 10 TO 15 YEARS OF AGE, ON THE HOME FARM AND WORKING OUT AS REPORTED BY U. S. CENSUS FOR 1910, BY STATES

STATES	ON HOME FARMS		WORKING OUT		Total
	10-13 yrs.	14-15 yrs.	10-13 yrs.	14-15 yrs.	
Alabama	75,662	43,486	12,042	8,670	139,860
Arizona	137	147	65	146	495
Arkansas	46,944	28,698	6,406	5,252	87,300
California	511	814	204	797	2,326
Colorado	818	988	480	691	2,977
Connecticut	85	276	58	400	819
Delaware	616	600	408	532	2,156
District of Columbia	19	25	.....	.....	44
Florida	7,844	4,807	3,040	2,291	17,982
Georgia	70,551	43,874	15,105	12,480	142,010
Idaho	677	844	212	353	2,086
Illinois	6,390	9,887	1,533	4,959	22,769
Indiana	5,499	7,797	1,215	3,281	17,792
Iowa	4,230	7,803	1,086	3,391	16,510
Kansas	5,520	7,154	541	1,431	14,646
Kentucky	24,654	19,325	3,923	5,049	52,951
Louisiana	20,313	14,633	6,640	7,361	48,947
Maine	316	705	107	408	1,536
Maryland	2,274	2,240	1,590	2,414	8,518
Massachusetts	71	296	79	519	965
Michigan	1,884	4,196	415	1,592	8,087
Minnesota	4,354	6,718	521	1,651	13,244
Mississippi	72,518	43,812	8,816	6,643	131,789
Missouri	13,805	14,630	2,116	4,157	34,708
Montana	226	354	146	251	977
Nebraska	3,321	4,827	437	1,272	9,857
Nevada	9	29	10	35	83
New Hampshire	43	158	66	253	520
New Jersey	418	666	352	914	2,350
New Mexico	1,366	1,172	283	512	3,333
New York	936	2,291	543	2,404	6,174
North Carolina	62,750	37,771	11,203	8,669	120,393
North Dakota	2,160	2,635	452	974	6,241
Ohio	4,110	6,758	1,032	3,057	14,957
Oklahoma	21,528	16,392	2,178	2,809	42,907
Oregon	475	746	120	433	1.774
Pennsylvania	5,141	7,065	2,629	4,881	19,716
Rhode Island	20	57	11	111	199
South Carolina	51,457	30,389	11,232	8,899	101,977
South Dakota	2,697	3,115	365	851	7,028
Tennessee	34,817	24,399	5,111	5,847	70,174
Texas	86,347	52,905	11,583	9,808	160,643
Utah	777	855	147	304	2,083
Vermont	204	454	114	484	1,256
Virginia	17,849	14,036	5,192	6,653	43,730
Washington	528	890	154	469	2,041
West Virginia	7,155	6,313	1,213	1,720	16,401
Wisconsin	2,833	6,205	527	2,225	11,790
Wyoming	198	170	56	114	538
Totals	673,057	484,407	121,758	138,437	1,417,659

The particular inquiry of which this monograph is a report, was concerned only with that kind of agricultural child labor which is the most striking feature of the situation in Colorado, namely, the use of children in the cultivation of sugar beets. The eastern half of Colorado is part of the great central plain, sloping gradually from the mountains eastward, and in the basins of the South Platte River in the northeast, of the Arkansas River in the southeast,

Courtesy of Clason Map Co., Denver

COLORADO, SHOWING ITS THREE SUGAR-BEET DISTRICTS AND LOCATION OF PRODUCING COUNTIES

and of the Grand and Gunnison Rivers on the western slope, where irrigation is carried on, sugar-beets are extensively raised. The fact that Colorado led all other states in this industry in 1915 makes this study all the more significant. The United States Department of Agriculture in December, 1915, announced the production of beet sugar for the year, by states, as follows:

TABLE C—PRODUCTION OF BEET-SUGAR IN 1915, BY STATES

Colorado	237,900 tons
California	203,200 "
Michigan	129,300 "
Utah	87,300 "
Idaho	52,700 "
Ohio	32,100 "
Other States	123,700 "
Total	866,200 tons

Estimates of the number of children whose attendance at school is interfered with by work in the beet fields, were obtained from local school authorities in nearly all the counties where sugar-beets are raised, and these estimates are summarised in the following table:

TABLE D—NUMBER OF BEET-WORKERS UNDER SIXTEEN YEARS OF AGE AND THEIR ANNUAL LOSS OF SCHOOLING DUE TO BEET-WORK, BY COUNTIES, AS ESTIMATED BY SUPERINTENDENTS OF SCHOOLS

	Counties	Number	Ages	School weeks lost
South Platte Basin	Adams	43	7–15	From 2 to 12
	Boulder	200	6–15	12
	Denver	300	6–15	22
	Larimer	700	6–15	From 9 to 10
	Logan	400	6–15	8
	Morgan	500	6–15	From 12 to 16
	Weld	1,750	6–15	8
Arkansas Basin	Crowley	100	6–15	8
	Otero	145	6–15	8
	Pueblo	361	6–15	6
Western Slope	Delta	156	6–15	6
	Mesa	55	6–15	From 6 to 12
	Montrose	131	8–13	8
		4,841		

The children affected in Bent and Prowers Counties in the Arkansas River Valley would increase this total to at least 5,000. Estimates of the numbers involved in these two counties were not

obtained although it was admitted that beet-work there interfered with attendance at school to some extent.

Observation of labor conditions in the Colorado sugar-beet fields during the season of 1915 showed that compared with the total number of persons engaged in the field work, the number of children under 16 years was relatively small; and that most of these children were from 7 to 13 years of age, corroborating the statement of school superintendents that from 80 to 90 per cent of the children included in their estimates were under the age of 14 years. Only rarely are the children found to outnumber the adult workers in a single field; one of the accompanying illustrations shows such a

"Topping" Beets; Seven Children Aged 7 to 14 Years—An Exceptional Group

case. Viewed in the aggregate about 7 per cent of field workers are children under 14 years of age. It is only because the industry is extensive in Colorado that so large a number as 5,000 boys and girls are involved. Consequently if the labor of children under 14 years of age were eliminated the industry would not suffer.

The number of children employed in the sugar mills is negligible—messenger service is perhaps the only task a child could perform in a mill. The children work in the fields and are almost invariably members of the family living on the land, although their residence there is usually only during the "season"—from the time in the Spring when the ground is prepared until late in the Autumn when

the crop is harvested. The great majority of the workers are immigrants, the so-called "Russians" predominating; these are really descendants of German families who emigrated to Russia generations ago and the term "Russian" is in their case a misnomer, for they have retained the language, customs and traditions of their

"THINNING" BEETS—THE STOOPING IS A CONSTANT STRAIN

forefathers. Mexicans, Japanese, Italians, Austrians, Slovaks and a few native Americans also are engaged in this industry.

The work of the children in the fields begins in Spring with the process called "thinning." The beet plants come up in clusters, and are then pulled out until only single ones, about eight inches apart, are left in the rows. Boys and girls of 7 or 8 years and upwards work steadily at this task throughout the day bending over the plants, their nimble fingers enabling them to keep pace with the adults. The next step is hoeing; this is not so tiring as thinning because the posture of the worker is more erect, and being a heavier kind of labor it cannot be performed by the very young children. The plants are usually hoed three times, but the field must be kept free from weeds at all times, hence this work extends through the Summer until the beets have matured.

"HOEING"

The first process in harvesting is called "pulling." The soil between the rows is broken up by an implement called a "puller" resembling a plow. This simply loosens the soil about the beets

"PULLING" BEETS—THE GIRLS ARE 8, 10, 13 AND 15 YEARS OLD

and does not throw them out, hence some exertion is required of the workers who finish the pulling by hand. Walking between two rows and grasping the tops, a beet is pulled with each hand. Then the worker knocks the two beets together to dislodge the clinging soil, throws them into a pile nearby, and stooping again, pulls another pair. Although this is generally called "piling," most of the work is in the pulling, for a child must often exert his full strength, especially when the ground is "caked" or is very moist and sticky.

A HARD PULL

After having been pulled, the larger beets were found to weigh, with the tops and attached soil, about 12 pounds each, the average weight of the beets alone being five pounds. The scope of this inquiry did not permit a scientific study of physical effects but it would appear that continuous handling of these beets throughout the harvest season, combined with the steady stooping, involves great physical strain and is therefore a very objectionable form of work

for children. Some of the photographs reproduced here show children of 7 and 8 years performing this heavy labor. Instances were found of children working from 5 a. m. to 7 p. m. in the rush season, their average work-day being from 6 a. m. to 6 p. m. Children too young for these tasks are commonly left to shift for themselves, and care for one another as best they can.

The next process in harvesting is "topping," which is done at intervals, after a few rows of beets have been piled. Each worker provides himself with a huge knife about 16 inches long, having a sharp prong at the end by means of which the beet is lifted from the pile. A child holds the beet against his knee, and with a vigorous stroke, cuts off the top. The beet is fibrous and a sharp blow is required, and as the knee is not protected, children not infrequently hook themselves in the leg. One of the pictures shows both the start and the finish of the topping stroke. This work also is unsuited to young children, and as the work-day is long, common sense protests that the effect upon them cannot be other than harmful.

The amount of energy put forth by the boys and girls in these harvesting processes is much greater than it appears to be upon

casual observation; indeed, the owner of one farm declared that the 10-year-old daughter of his contractor topped five tons of beets daily. This represented the child's net achievement—as a matter of fact, the total tonnage was greatly in excess of this amount. In the course of the day a beet passes through the hands of a worker twice, first when pulled, and then when topped; moreover, the weight of soil and tops and the condition of the ground must be considered. The aggregate weight handled by the child daily is therefore much more than five tons—this 10-year-old girl was really handling from 12 to 15 tons.

THE GIRL IS BEGINNING, THE BOY ENDING, THE "TOPPING" STROKE

Exposure to the weather in the late Autumn is another factor making this work in the fields undesirable for young children. They are often insufficiently clothed on cold days. Their hands become badly chapped and many distressing cases of suffering are cited by teachers. It is by no means unusual to see families pulling and topping in mid-November when ice is in the furrows and keen, cold winds are blowing. Sometimes the children work in the early morning and late evening by lantern light, and occasionally, when a heavy frost is feared, the work is continued even on Sunday, particularly toward the end of the season.

Through energy, persistence and thrift many families earn and save enough money in a very few years to enable them to buy

small farms, but this worthy ambition ceases to be entirely a virtue when pursued at the sacrifice of their children's proper education and normal childhood. Most of the beet farming is done under the contract system, families agreeing with the land owners to perform the work in the fields for the season. They move out on to the land, often even a hundred miles away, in the early Spring and do not return home until the late Autumn, in some instances remaining throughout the year. The owners pay the families from $18 to

A "Russian" Family and Their Sod House "in the Beets"

$40 per acre for their services for the season in addition to providing rude dwellings. The smaller sums are paid when the families do only the hand work and the owners attend to the ploughing and sowing, driving the "puller" and hauling the beets to the railroad, as well as furnishing horses, implements and water for domestic use and irrigation; the higher pay is for general services of which the hand work is a part. The contract between the family and the owner usually covers one season, but if the family is found to render satisfactory service the time is lengthened to two and often three seasons. A typical blank contract is reproduced in the appendix

of this report, giving a minute description of the different processes of cultivation.

The company operating the sugar mills pays about $5 per ton for beets with sugar content of 12 per cent, delivered at the railroad. Beets yielding less sugar are generally not accepted. About fifteen tons to the acre is an average yield, and at $5 per ton would make the gross receipts $75 per acre, the net profit to the land owner in this case being about $35. In exceptional instances, where the land is unusually well adapted to beet culture, and other conditions are favorable, the profit of the land owner may rise to three times this amount. One farmer reported a crop of nearly 24 tons per acre for 1915, yielding $6.30 per ton because of the extra sugar content; this man received $149.50 per acre, clearing about $109.50 after having allowed $40 for expenses; 20 acres having been cultivated, his total profit exceeded two thousand dollars for the season.

A man and his wife and five or six children able to work, are expected to cultivate from 50 to 60 acres of beets each season. One family of nine (husband, wife and seven children, the youngest of whom was 9 years old) worked 83 acres in the season of 1915. The amount of money saved by these families out of the sum paid to them by the land owner according to contract, varies of course with the acreage cultivated and their thrift and skill in management; a man, wife and two children aged 6 and 8 years, cleared $200 in the season of 1915, while another family of the same size saved $350. A father, mother and two sons aged 9 and 12 years, claimed to have realised $700 clear from their season's work. A prosperous beet-raiser in the South Platte River district keeps his 6, 8 and 10-year-old children out of school to work in the fields although he owns more than two hundred acres of valuable land. Another family consisting of father, mother and two girls aged 9 and 10 years, who worked 40 acres of beets in 1915, own a good home in one of the large northern towns of the state; this home is boarded up for half the year while the family lives in a little shack "in the beets." An 11-year-old girl was found who, with her sister aged 7, is kept out of school to work in the beet fields although her family boasted that they made $10,000 last year from their farm. One parent declared to a school principal that his boy was worth $1,000 for work during the beet season but if he went to school he was nothing but an expense. Financial considerations and

not the welfare of the child lie at the center of vision in the narrow perspective which characterises the lives of so many of these families.

Some of the illustrations in this report give an idea of the conditions under which the people live while working on the land. The houses are really nothing but shanties, poorly constructed and equipped, and are designed for temporary residence only. This reveals the readiness with which the workers sacrifice all comfort and even necessaries to the immediate needs of the work. In several towns of the beet section they are segregated in communities popularly

A TYPICAL BEET-WORKERS' SHACK

known as "Russiatown," "St. Petersburg" or "The Jungle." They live apart from the life of the town itself, many of them not being able to speak English, and have no social intercourse with American residents. The best corrective for this isolation and its inevitable train of unfortunate results is the steady association of their children with American boys and girls in public schools on a democratic basis. It is a slow process but thorough and effective. But the children of these families are not permitted to attend school regularly throughout the school year, for their parents insist upon their helping with the work in the fields.

The Colorado compulsory education law requires the attendance at school of every child between 8 and 16 years of age unless he is being sufficiently instructed by a qualified person, or his bodily or mental condition is such as not to permit attendance; it does not, however, apply to children 14 and 15 years old if they have completed the eighth grade, or if their help is necessary for their own or their parents' support, or if it is for their best interests to be excused. Superintendents are authorised to issue permits for exemption from the provisions of the act for any of these reasons. The law, however, is not enforced in the beet sections. Children of all ages are absent for months at a time and no action is taken. This disrupts

"THE JUNGLE"—A SUGAR MILL IN BACKGROUND

the school, breaks down respect for the law and makes a farce of the school system. It is bad not only for the beet-working child, who loses the instruction the state demands he shall have, but also for all the other pupils whose school work is upset by the enrollment of numbers of children after a portion of the course of study has been covered. It is bad for the community because the law, representing the will of the people, is held in derision; and especially bad for the very people who are supposedly imbibing the principles of American citizenship. This disregard of the law is unfortunate from every point of view and if the present and future welfare of these children is to be conserved, the people can afford to tolerate

these conditions no longer. In a futile effort to reduce the extent of the evil a few superintendents and principals compromise by agreeing with parents to grant permits to their children under 14 years of age, authorising their absence from school for work in the fields, on condition that they return earlier than customarily. Such action contravenes the law and its interpretation by the state superintendent of education.

A Morgan County School; Upper Picture Showing Teacher and Lone Pupil Present in October—Below, the Attendance in December, After the Beet Harvest

The district system of school organisation is largely responsible for these conditions. Each county contains a large number of small school districts and in the third class districts (those having 350 or fewer children of school age) and also even in some of the second class districts (those having between 350 and 1,000 children) the residents are comparatively few in number and well known to one another. Enforcement of the law would mean that the local school board, whose members are chosen from among these families, would

have to prosecute their friends and neighbors for violation. This would arouse bitter personal feeling and it is not surprising that such action is not taken. Each district has its own school board charged with the duty of seeing that children within the specified age limits enroll in school and attend regularly. The results obtained under this system are pitiable and will be discussed in detail in the following pages.

These conditions will not be satisfactorily remedied until the unit for school organisation is made larger. The small district plan is unfair in its working and results to the child, the teacher and the community. If the unit were more comprehensive the truant officer could be really effective for he would not

A Logan County School Before and After the Beet Harvest

then be embarrassed by close friendship with parents whose negligence makes necessary a resort to the courts. County superintendents and school principals and teachers in these small districts are practically unanimous in denouncing the present system and in demanding

a re-organisation on a broader plan so that school work will not be interfered with and virtually destroyed for part of the year as is unfortunately the case to-day. The consensus of opinion is in favor of what is known as the county unit system which would make the county into one school district with a county board of education; this board could then employ a truant officer to enforce the law throughout its jurisdiction. This is the logical thing to do. Moreover, the state should then also require each county to enforce the compulsory education law, and in the event of any county's failure to do so, that county should be deprived of all state funds for school purposes. Some such step is necessary to insure the effective enforcement of the school attendance laws. The welfare of the children of these districts actually depends upon this issue and it is believed that when the matter is clearly brought before the people of Colorado they will act, and act in no uncertain way.

For the purpose of this study certain typical school districts in representative counties were selected in the South Platte and Arkansas River Valleys with a view to showing conditions as they exist throughout the beet sections. The intensive part of the inquiry was confined to these typical districts because conditions in the three beet sections of the state, as observed at different periods of the season, were found to be so uniform that such a presentation, in connection with the estimates of school superintendents given in Table D, would amply suffice to show the general situation.

Every school in the typical districts selected was visited and the record of enrollment and daily attendance of every child connected with it at any time within the first three months of the present school year, namely, September, October and November, 1915, were procured. The children so recorded were divided into "beet-workers" and "non-beet-workers" according to the testimony of the teachers and the children themselves. From the following table it will be seen that the preponderance of absence was on the side of the beet-workers. It should be borne in mind that a school month consists of 20 school days and that therefore 60 school days are three school months and not two calendar months, as might be supposed. Most of the schools opened on or about September 7, the third school month having ended about November 26. In those districts credited with fewer than 60 school days, the difference is due either to the schools having been closed on one

or two holidays or to a late opening. In two instances (Larimer 3 and Logan 91) the school census of children 6 to 20 years of age is less than the total enrollment; this can probably be accounted for by faulty census enumeration, although the enrollment of beet-workers from other districts would also explain the discrepancy. The census was taken early in the Spring of 1915, half a year having elapsed before this period of enrollment began. The absences charged against the beet-workers in this table were, so far as could be determined by careful inquiry, caused entirely by work in connection with beet culture; in the great majority of instances this work was done in the fields, but when a child was kept at home to look after the baby, while the rest of the family labored in the fields, this absence also was considered as due to beet-work. Absences of beet-workers due to other causes were not included in these figures; for example, some of those enrolled in one of the schools of Pueblo—12 were absent in September because of truck gardening and the days missed on this account do not appear in the table. The absences of the other children enrolled were occasioned chiefly by parental indifference, illness, home work and agricultural labor other than beet-work.

It will be observed that in these thirty-three school districts, out of an enrollment of 2,137 pupils, 43.9 per cent were beet-workers, each of whom was absent, on the average 33.1 days in the first three months of the present school year. The non-beet-workers were each absent only 9.4 days in the same period. In other words the beet-workers missed more than three and one-half times as many days as the other children. Surely this fact is significant enough of itself not to need any comment.

In several other districts of the same and other counties the records of enrollment and attendance were obtained in certain schools where the situation was of special interest but these are not included in the following table which is intended to represent general conditions in the beet regions. The Lincoln school in the town of Sterling, Logan County, has four school rooms in the basement of the building, reserved for the accommodation of beet-workers; when school opened on August 30, very few of these children were on hand, consequently for a time only one room was used, and the total enrollment for the first school month was only 30 pupils. In the second month many of these 30 had left and a few others

TABLE E—SCHOOL ENROLLMENT AND ABSENCES OF BEET-WORKERS AND NON-BEET-WORKERS IN FIRST THREE MONTHS OF SCHOOL YEAR 1915-16, BY TYPICAL SCHOOL DISTRICTS

COUNTIES AND DISTRICTS	School Census 6–20 years	No. ENROLLED*		No. OF DAYS ABSENT				No. of School Days
				TOTAL		AVERAGE		
		Beet Workers	Non-Beet Workers	Beet Workers	Non-Beet Workers	Beet Workers	Non-Beet Workers	
Larimer:								
District 3..	58	47	24	1,685.5	196.0	35.8	8.2	58
" 6..	89	15	41	610.0	351.5	46.7	8.6	56
" 15..	47	18	53	681.5	575.0	37.8	10.8	56
" 17..	91	26	47	1,058.0	305.5	40.7	6.5	57
" 21..	62	9	43	284.0	416.5	31.6	9.7	57
" 26..	84	32	30	1,080.0	214.0	33.7	7.1	54
" 29..	29	11	11	465.0	246.5	42.3	22.4	58
" 31..	45	6	13	182.0	98.5	30.4	7.6	56
" 35..	102	50	25	1,904.5	112.5	38.1	4.5	57
Total.....	707	214	287	7,950.5	2,516.0	37.1	8.7	..
Logan:								
District 28..	59	23	25	858.0	147.5	37.3	5.9	59
" 30..	20	13	1	371.0	3.0	28.5	3.0	49†
" 31..	46	35	5	1,298.0	125.5	37.1	25.1	58
" 34..	43	20	14	747.0	69.0	37.3	4.9	56‡
" 54..	146	36	80	1,466.5	546.5	40.7	6.8	57
" 60..	78	15	38	404.5	372.0	26.9	9.8	58
" 79..	39	10	7	428.0	153.5	42.8	21.9	57
" 84..	35	3	11	131.0	94.0	43.6	8.5	58
" 85..	48	13	15	499.5	177.5	38.4	11.8	57
" 91..	50	19	28	742.5	479.5	39.1	17.1	56
Total.....	564	187	224	6,946.0	2,168.0	37.1	9.7	..
Pueblo:								
District 12..	549	195	227	5,118.5	2 031.5	26.2	8.9	56
" 47..	267	83	110	1,960.5	1,318.0	23.6	12.0	57
Total.....	816	278	337	7,079.0	3,349.5	25.5	9.9	..
Weld:								
District 11..	99	25	48	864.0	195.0	34.6	4.1	59
" 17..	72	46	17	1,773.0	166.0	38.5	9.8	58
" 24..	42	9	22	298.0	75.5	33.1	3.4	59
" 27..	97	29	36	1,079.0	337.5	37.2	9.4	60
" 47..	89	32	32	1,205.5	585.5	37.7	18.3	58
" 53..	65	11	27	184.5	291.0	16.8	10.8	58
" 56..	71	11	35	354.5	542.5	32.2	15.5	58
" 60..	69	23	38	770.0	260.0	33.5	6.8	58
" 70..	55	13	12	537.5	48.0	41.3	4.0	60
" 83..	53	14	25	513 0	428.5	36.6	17.1	59
" 86..	65	15	33	575.0	132.5	38.3	4.0	56
" 90..	100	31	26	905.0	151.5	29.2	5.8	60
Total.....	877	259	351	9,059.0	3,213.5	35.0	9.2	..
Grand total	2,964	938	1,199	31.034.5	11,247.0	33.1	9 4	..

* In this table only those pupils who were present at least one day in the period covered by this inquiry were considered; the tables on retardation are based on the total enrollment which accounts for the difference in the numbers given in the respective tables.

† The one school in this district was closed for two weeks in October because of the general absence of pupils; this time is not included in the number of days absent because the teacher expects to keep the school open two weeks beyond the regular time for closing, next Spring.

‡ Weighted average taken for the two classes; one 60 days, the other 44 days. In other cases where there was a difference in the number of school days the simple average was taken, the range being only two or three days.

had come in, the total enrollment being 21. In the third month the enrollment was 58, and in the first half of the fourth month 67 additional children entered. These were "Russian" boys and girls who had been engaged in beet-work outside of Sterling and had moved into town as the harvest was finished. On December 3 four rooms were being used to seat them. They ranged in age from 6 to 14 years and had been assigned to the first four grades although this grading was by no means considered final or satisfactory. Two-thirds of them missed the first three months of school, only three out of the total number having attended with any degree of regularity during that time, and the majority will probably drop out early in the Spring when the beet-work begins again. It is clearly impossible to follow the prescribed course of study with these children, and cover a full year's assignment in the brief time they attend. Retardation and discouragement follow, and the hopelessness of the situation is apparent. What is needed is a reorganised system that will keep the children in school wherever they are, insuring both the state and the child against the loss entailed by this disregard of the law.

The Knearl School (shown on back cover) located in District 2 of Morgan County suffered severely. The building is new and attractive, all the physical conditions being such as to encourage attendance. This school opened on September 6, and the total enrollment for the first school month was 52, the average daily attendance 37. In October the total enrollment had dropped to 34 while the average daily attendance was only 5. In November the average daily attendance had risen to 33, the total enrollment to 79 and more were expected later. Nearly all these children were beet-workers.

In School No. 9 in District 3 of Morgan County out of a total enrollment of 22, twenty were beet-workers, each of whom had missed out of the 58 school days in the first three months 39.2 days, the others 2.7 days each. The first month the enrollment was 10 and the average daily attendance 5.6; the second month the enrollment was 5 and the average daily attendance 2.2; the third month the corresponding figures were 22 and 16.4.

The Garfield School in District 12 of Morgan County is devoted to the instruction of beet-working children exclusively. It was opened on November 29 with 90 pupils present and will probably

close about May 1. This affords little more than half as much schooling as the "non-beeters" receive.

In the city of Pueblo, three schools, Riverside, Bradford and Edison, are affected by the late enrollment of children whose families move into the city from the beet sections after the harvest season. In the second week of November, 1914, the Riverside School enrolled 60 Mexican children, 5 to 16 years of age, who left the middle of the following April. They do not attend school elsewhere and are retarded, on the average, three years. The majority work in the beet-fields of the Rocky Ford district and miss altogether about 16 weeks of schooling—almost half the school year.

THE TENT HOME OF MEXICAN WORKERS.

The families move into Pueblo for the Winter so that the fathers and the older boys can work in the steel mill or on the city streets. The return from the beet-fields was later in 1915, the children not enrolling until the first of December.

The Rockwood Place School in District 5 of Larimer County had a total enrollment in the first three months of the school year 1915-16 of 136 pupils, of whom practically every one was a beet-worker. The enrollment for September was 64 and the average daily attendance 53; for October the enrollment was 51 and the average daily attendance had dropped to 39; for November the enrollment was 129 and the average daily attendance 67.6. At the beginning of the fourth school month 24 additional children

enrolled—they had already missed three months, a third of the school year, and will probably miss more time in the Spring.

In the Lincoln School, District 2 of Larimer County, the pupils in the first four grades are divided into "beeters" and "non-beeters" and taught in separate rooms. The "beeters' " rooms were closed in October and November, following the exodus of the children to the fields, and were re-opened on November 29, the beginning of the fourth school month. In the four upper grades there is no division. The effect of the beet-work is strikingly shown in the poor attendance of the "beeters" as compared with that of the other pupils.

ATTENDANCE AT THIS MODERN SCHOOL IS SERIOUSLY AFFECTED.

Six brothers and sisters, from 6 to 13 years of age, are among the pupils attending the Sanders School in District 30 of Logan County. They belong to a family that has resided in this county for many years and owns several hundred acres of land, one hundred of which were in beets last Autumn. They failed to attend school 40 per cent of the time in the first three months, and were responsible for 22.6 per cent of the total absences in this period.

The attempt made in several localities to meet the situation by segregating the beet-workers in special school rooms or buildings

which are closed in the seasons of beet-work, is at best a palliative, designed to protect the regular school work from the disorganisation that follows late enrollment of numbers of new pupils, as much as

TABLE F—TOTAL ENROLLMENT, AVERAGE DAILY ATTENDANCE AND PER CENT OF ENROLLMENT OF AVERAGE DAILY ATTENDANCE, 1915, FOR LINCOLN SCHOOL, DISTRICT 2, LARIMER COUNTY

GRADE	SEPTEMBER			OCTOBER			NOVEMBER		
	Enrollment	Average Daily Attendance	Per Cent	Enrollment	Average Daily Attendance	Per Cent	Enrollment	Average Daily Attendance	Per Cent
	"BEETERS"								
First	11	7.2	65.4	..	Closed	....	..	Closed	....
Second	11	5.9	53.6	..	"	....	..	"	....
Third	14	10.1	72.1	..	"	....	..	"	....
Fourth	15	11.6	77.3	..	"	....	..	"	....
	"NON-BEETERS"								
First	31	28.2	91.0	35	29.7	84.8	34	29.6	87.1
Second	36	33.5	93.0	36	32.7	90.8	34	33.4	98.2
Third	37	35.4	95.7	36	32.3	89.7	33	31.0	93.9
Fourth	42	39.5	94.0	40	37.1	92.7	39	37.2	95.3
	COMBINED								
Fifth:									
Beeters	9	6.1	67.7	5	2.1	42.0	4	2.6	65.0
Non-Beeters	32	29.6	92.5	33	30.1	91.2	34	32.8	96.4
Sixth:									
Beeters	7	3.7	52.8	1	0.3	*	1	0.2	*
Non-Beeters	35	33.3	95.1	32	29.3	91.5	35	30.3	86.5
Seventh:									
Beeters	9	6.9	76.6	5	0.7	13.0	5	1.6	32.0
Non-Beeters	38	35.5	93.4	35	33.8	96.5	35	33.2	94.8
Eighth:									
Beeters	5	4.1	82.0	1	0.4	*	2	0.3	*
Non-Beeters	61	57.2	93.7	61	58.3	95.6	59	55.7	94.4
Total:									
Beeters	81	55.9	69.0	12	3.4	28.3	12	4.7	39.2
Non-Beeters	312	292.2	93.6	308	283.6	92.1	303	284.8	94.0

* Number too small for computing percentage.

to benefit the beet-workers themselves. It does not get down to the root of the matter. Neither does the plan of opening school earlier in the morning so as to dismiss the children for work in the

afternoon. They evade the real issue which must be squarely met before the problem can be solved. The interests of the child and not of agriculture must be the primary consideration. The state rightly lays down the proposition that childhood is the period for protection and education and acts upon this by providing schools and requiring children to attend until they are at least 14 years of age. This compulsory attendance law is supplemented by the mother's pension act to cover cases where its operation occasions hardship. The emphasis is laid upon the child and his welfare, and situations, such as that in connection with sugar beet culture, where the emphasis is shifted to considerations of less vital concern, should be dealt with so as promptly to restore the standard upon which the whole system of public instruction is built. Schools for all the children and all the children in school is the practical ideal.

In his annual report, the secretary of the district board of education gives the average cost per month of the schools of the district for each pupil, based on the enrollment and also on the average daily attendance. The cost of the schools includes the regular expenses for all purposes, plus 6 per cent of the value of sites and buildings. These figures are given in the following table, for the school year 1914-15, for each district covered by this study. The contrast between the per capita monthly costs according to enrollment and average daily attendance shows at once how indifferently the parents treat the schools and how dearly the community pays. Toward the support of these schools the people not only of the district but also of the county and of the state contribute—the situation concerns all the people directly from a financial viewpoint as well as from a consideration of the state's welfare.

The retardation of the beet-workers and non-beet-workers in the districts selected is presented in Tables H, I and J following. The standard for measuring retardation used in compiling these figures, is that commonly employed for the purpose—a child of 6 or 7 years of age should be in the first grade, one of 7 or 8 years in the second, one of 8 or 9 years in the third, and so on to the eighth grade, in which the pupils should be 13 or 14 years old; those of the same ages enrolled in higher grades are considered advanced or ahead of their normal grades, and those in lower grades, backward or retarded.

The excessive retardation of the beet-workers as compared with the other pupils is in all probability due entirely to their prolonged absence, for teachers declare that the beet-workers would do fully as well in school as the others if they attended as regularly.

TABLE G—ABSENCES OF PUPILS IN SEPTEMBER, OCTOBER AND NOVEMBER, 1915, AND PER CAPITA MONTHLY COST OF SCHOOLS FOR YEAR, 1914-1915, BASED ON TOTAL ENROLLMENT AND AVERAGE ATTENDANCE, BY TYPICAL DISTRICTS

COUNTIES AND DISTRICTS	Absences in September, October and November, 1915, in school months		Average Cost per month per pupil for 1914-15, based on	
	Beet-workers	Non-beet-workers	Enrollment	Attendance
Larimer:				
District 3	87.2	10.2	$2.30	$3.90
" 6	32.7	18.8	2.85	4.42
" 15	36.5	30.8	2.18	4.16
" 17	55.7	16.1	2.84	4.66
" 21	14.9	21.9	2.22	3.65
" 26	60.0	11.9	3.16	4.63
" 29	24.1	12.8	1.90	5.08
" 31	9.8	5.3	2.39	4.77
" 35	100.2	5.9	2.47	5.39
Logan:				
District 28	43.6	7.5	1.41	3.24
" 30	22.7	0.2	4.25	9.56
" 31	67.1	6.5	3.26	3.61
" 34	40.0	3.7	2.58	4.51
" 54	77.2	28.8	3.03	5.53
" 60	20.9	19.2	3.28	5.22
" 79	22.5	8.1	1.88	4.99
" 84	6.8	4.8	2.60	4.06
" 85	26.3	9.3	2.08	2.31
" 91	39.8	25.7	3.04	5.44
Pueblo:				
District 12	274.2	108.8	1.80	3.26
" 47	103.1	69.4	2.04	3.20
Weld:				
District 11	43.9	9.9	2.50	4.03
" 17	91.7	8.6	2.00	2.90
" 24	15.2	3.8	2.85	5.09
" 27	53.9	16.9	2.36	3.50
" 47	62.3	30.3	3.32	4.72
" 53	9.5	15.1	3.83	6.67
" 56	18.3	28.1	3.25	5.20
" 60	39.8	13.4	1.90	2.50
" 70	26.9	2.4	2.06	5.68
" 83	26.1	21.8	2.08	3.78
" 86	30.8	7.1	2.85	4.76
" 90	45.3	7.6	1.90	3.88

TABLE H—DISTRIBUTION OF PUPILS AMONG GRADES, BY AGES, FOR TYPICAL DISTRICTS, SEPTEMBER-NOVEMBER, 1915

AGES	GRADES											Total
	1	2	3	4	5	6	7	8	9	10	11	
BEET-WORKERS												
6 years	95	3										98
7 "	70	22	2									94
8 "	57	39	25									121
9 "	19	40	29	20	2							110
10 "	17	20	37	36	15	1						126
11 "	5	12	19	29	26	10						101
12 "	3	5	20	26	39	18	7					118
13 "	2	2	10	9	20	20	13	6	2	1		85
14 "	..	2	4	6	9	15	25	5	1	..		67
15 "	1	1	2	2	5	9	11	5	1	..		37
16 "			..			2	2	8	1	1		14
17 "			1			1		1	1			4
Total	269	146	149	128	116	76	58	25	6	2		975
NON-BEET-WORKERS												
6 years	216	17										233
7 "	87	77	19									183
8 "	36	49	63	10	3							161
9 "	10	20	29	45	24							128
10 "	4	4	25	41	49	11						134
11 "	3	3	8	21	33	30	7					105
12 "	1		5	17	12	32	34	8				109
13 "			2	3	9	13	22	29	3			81
14 "				1	3	7	12	33	2	1		59
15 "				2	1	1	5	13	3	1		26
16 "							5	7	..	5		17
17 "									1	..	1	2
18 "									1	..	..	1
Total	357	170	151	140	134	94	85	90	10	7	1	1,239

... PER CENT OF PUPILS RETARDED, NORMAL, AHEAD AND ... IN EACH OF THE 8 GRADES, FOR TYPICAL DISTRICTS ... (SEPTEMBER-NOVEMBER, 1915)

	Grade										Total	Per Cent
	1	2	3	4	5	6	7	8	9	10		
Beet Workers												
...	37	40	37	29	39	20	25	5	1	..	253	48.2
...	19	20	19	26	20	15	11	8	1	..	139	26.5
...	17	12	20	9	9	9	2	1	..	..	79	15.0
...	5	5	10	6	5	2	..	..	..	..	33	6.3
... and ...	6	5	7	2	..	1	..	..	..	..	21	4.0
Total retarded	104	82	93	72	73	47	38	14	2	..	525	100.0
Total Normal	165	61	54	56	41	28	20	11	2	1	439	.....
" Ahead	..	3	2	..	2	1	..	..	2	1	11	.....
" Enrolled	269	146	149	128	116	76	58	25	6	2	975	.....
Per Cent Retarded	38.7	56.2	62.4	56.3	62.9	61.8	65.5	56.0	33.3	..	53.9	.....
" Normal	61.3	41.8	36.2	43.7	35.4	36.9	34.5	44.0	33.4	*	45.0	.....
" Ahead	..	2.0	1.4	..	1.7	1.3	..	..	33.3	*	1.1	.....
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	..	100.0	.....
Non-Beet Workers												
Retarded 1 year	36	20	25	21	12	13	12	13	..	..	152	59.6
" 2 years	10	4	8	17	9	7	5	7	1	..	68	26.7
" 3 "	4	3	5	3	3	1	5	..	1	..	25	9.8
" 4 "	3	..	2	1	1	..	..	..	..	..	7	2.7
" 5 " and more	1	..	..	2	..	..	..	..	..	..	3	1.2
Total retarded	54	27	40	44	25	21	22	20	2	..	255	100.0
Total Normal	303	126	92	86	82	62	56	62	5	7†	881	.....
" Ahead	..	17	19	10	27	11	7	8	3	1	103	.....
" Enrolled	357	170	151	140	134	94	85	90	10	8	1239	.....
Per Cent Retarded	15.1	15.9	26.5	31.4	18.7	22.3	25.9	22.2	20.0	..	20.6	.....
" Normal	84.9	74.1	60.9	61.5	61.2	66.0	65.9	68.9	50.0	87.5	71.1	.....
" Ahead	..	10.0	12.6	7.1	20.1	11.7	8.2	8.9	30.0	12.5	8.3	.....
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	.....

* Number too small for computing percentage.

† One in 11th grade.

TABLE J—RETARDATION OF BEET-WORKERS AND NON-BEET-WORKERS, BASED ON DISTRIBUTION ACCORDING TO AGE AND GRADE, BY TYPICAL SCHOOL DISTRICTS

COUNTIES AND DISTRICTS	BEET-WORKERS			NON-BEET-WORKERS		
	Total Number	Number Retarded	Per Cent Retarded	Total Number	Number Retarded	Per Cent Retarded
Larimer:						
District 3	52	17	32.6	24	1	4.0
" 6	15	11	73.4	41	2	5.0
" 15	18	9	50.0	53	8	15.0
" 17	26	16	61.6	47	6	12.9
" 21	9	6	66.6	43	6	13.9
" 26	32	12	37.5	37	5	13.5
" 29	11	6	54.5	14	6	42.8
" 31	9	5	55.5	13	0	0.0
" 35	50	28	56.0	26	3	11.6
Total	222	110	50.0	298	37	12.4
Logan:						
District 28	23	11	47.8	25	5	20.0
" 30	16	8	50.0	1	1	*
" 31	38	28	73.7	5	3	60.0
" 34	20	6	30.0	15	4	26.6
" 54	38	23	60.0	80	17	21.0
" 60	15	4	27.0	44	4	9.0
" 79	10	6	60.0	11	3	27.3
" 84	3	3	*	11	0	0.0
" 85	15	9	60.0	15	3	20.0
" 91	21	16	76.2	32	9	28.1
Total	199	114	57.2	239	49	20.5
Pueblo:						
District 12	197	112	56.8	228	62	27.1
" 47	83	37	44.5	114	35	30.7
Total	280	149	53.2	342	97	28.3
Weld:						
District 11	25	15	60.0	50	9	18.0
" 17	46	26	56.5	17	2	11.8
" 24	9	3	33.3	22	2	9.1
" 27	29	16	55.2	38	6	15.8
" 47	33	18	54.6	32	10	31.2
" 53	11	5	45.4	27	3	11.1
" 56	11	5	45.5	36	8	22.2
" 60	24	13	54.1	39	9	23.1
" 70	16	9	56.2	14	6	42.8
" 83	14	7	50.0	25	5	20.0
" 86	17	13	76.5	33	5	15.1
" 90	39	22	56.4	27	7	26.0
	274	152	55.5	360	72	20.0
Grand Total	975	525	53.9	1,239	255	20.6

* Number too small for computing percentage.

APPENDIX

LABOR CONTRACT

CONTRACT FOR HAND LABOR FOR SEASON OF 1915

MEMORANDUM OF AGREEMENT, Made and entered into this .....day of....., A. D., 1915, by and between .....of.....of..... hereinafter designated as the grower, and.....of..... hereinafter designated as the contractor.

WITNESSETH; Whereas, the grower has entered into a contract with The Great Western Sugar Company of Sterling for the growing of sugar beets, and is desirous of contracting with the contractor for doing the hand work on said crop; now, therefore,

IN CONSIDERATION of the sum of One Dollar in hand paid by the grower to the contractor, receipt of which is hereby acknowledged, the contractor hereby covenants and agrees with the grower to do the hand work on.....acres, more or less, of sugar beets planted or to be planted.....¼ of Section ....., Township.....North, Range..... West of the Sixth P. M., for the season of 1915, in accordance with the rules and regulations printed on the back hereof and made a part of this contract.

The contractor further agrees to receive as full compensation for said work the prices hereinafter specified, and the said grower hereby agrees to pay said contractor for said hand work as fast as the respective classes of work have been completed and approved by the agricultural superintendent or field man of The Great Western Sugar Company, Sterling factory, at the prices specified below; except that it is mutually agreed between the parties hereto that $..... per acre shall be withheld from the first payment falling due under this contract until after the crop has been harvested, as a guaranty of the faithful fulfillment of this contract.

	Per Acre	Per Ton
For bunching and thinning.....	$6.00 or	$....
For second hoeing.....	$2.00 or	$....
For third hoeing.....	$1.00 or	$....
For pulling and topping.....	$9.00 or	$....

Plus an additional payment of 25 cents per ton for each ton in excess of an average yield of 12 tons per acre.

The grower further agrees to provide reasonable living accommodations for the contractor without expense to him, and to furnish said contractor with water near at hand for drinking and domestic purposes without expense.

This contract shall bind and benefit both parties thereto, and its fulfillment shall be a charge and a lien on the crop on which the labor is performed.

IN WITNESS WHEREOF, The parties hereto have subscribed their names the day and year first written above.

.....Grower.

.....Contractor.

RULES AND REGULATIONS GOVERNING THE HAND WORK ON THE WITHIN CONTRACT

Bunching and Thinning

This work is to be commenced by the contractor just as soon as the beets show four leaves and the grower has them cultivated, and must be completed as rapidly as possible in the following manner, to-wit: Beets to be thinned from seven to ten inches apart, leaving only one plant in each place; no double beets shall be left. The work must be done so that the land will be entirely free from weeds.

Second Hoeing

This work must be commenced by the contractor as soon as the thinning is completed and the grower has finished the second cultivation, by hoeing a little deeper than the first hoeing, killing and removing all weeds, and removing all double plants that may have been overlooked in the thinning. The grower must keep the crop cultivated so that at least ten inches of the center of the row remains clear of all weeds and foul growth up to the time of the third hoeing.

Third Hoeing

A third hoeing must be given the beets by the contractor, and in addition to such third hoeing and all further hoeing necessary to keep the beets free from weeds, until harvest of the beets is commenced, must be done by the contractor; and in the event of the beets having grown so large that a third or further hoeing would injure them, then all weeds that grow up to the time of the commencement of harvest must be removed by hand, as the beets must be kept free from weeds at all times until harvested.

Pulling and Topping

This work must be done just as soon as the grower receives orders from the Great Western Sugar Company to dig his beets. The plowing out shall be done by the grower. The beets must be pulled by the contractor and cleaned of adhering dirt, by knocking the beets together or otherwise as pulled, and throwing them into piles. The ground on which the beets are to be piled must be cleaned off and leveled down by the contractor so that the grower may fork the beets into the wagon free of dirt, rocks, leaves or other trash.

The beets shall be topped by the contractor in the following manner, to-wit; By cutting off the tops squarely just below the crown at the base of the bottom leaf. Knives shall not be used for lifting beets, but hooks may be used, provided they are properly driven into the crown of the beet only.

All tools for hand work shall be furnished by the grower.

All cultivating, irrigating, plowing out and loading shall be done by the grower, unless otherwise agreed upon.

All beets left in the field over night must be protected properly from frost by the contractor by covering the piles with beet tops, the tops to be removed by the grower before the beets are loaded.

The grower reserves the right in the event the hand work is not done properly or with sufficient rapidity by the contractor that the crop would suffer thereby, to engage additional help for doing the work as cheaply as practicable under existing conditions, and to deduct the expense of the same from this contract; it being agreed and understood, however, that in the event of any dispute arising between the grower and contractor as to the interpretation of the above rules as to the manner in which the work is being done, or as to the necessity of additional help, the agricultural superintendent or field man of the Great Western Sugar Company, Sterling factory, shall act as referee, and his decision shall be final and binding on both the contractor and grower.

COURT DECISIONS AFFECTING CHILD LABOR

1902-1914

SOPHIE D. WHITE

In the bi-monthly bulletin of the United States Department of Labor a brief digest of the most significant decisions of the higher state courts and of the United States Supreme Court with regard to labor is presented. The 72 cases with which this article is concerned deal only with the labor of minors, as reported in the bulletins of labor, dating from 1902 to 1914, inclusive. It was intended to make a study of the decisions recorded within the decade extending from 1902 to 1912, but since cases are often pending for a year or more, it was necessary to take the reports covering more than the ten-year period in order to include the decisions occurring within this time. Because, frequently, several principles were involved in one case, the decisions have been classified on the basis of the most important question under consideration.

Dangerous Occupations

The greatest number of decisions rested on the laws prohibiting the employment of children below a specified age in certain dangerous occupations. In seven cases, in the first place, the question involved was whether the injury received was due to contributory negligence of the child. One decision, handed down by the Supreme Court of Michigan, was in the affirmative, a girl under the legal age for employment at dangerous machinery being nevertheless adjudged guilty of contributory negligence because by "tripping" a machine she had set it in motion and thereby hurt her hand. In other cases it was held that "hasty action is not contributory negligence in a boy"; that an employer "violating the statute regarding age does so at his own risk"; and that "a child below age is not chargeable

with contributory negligence" because "the purpose of the statute is to protect the child from his own thoughtless or childish acts". It was also stated that it was immaterial whether or not the injury received was due to the particular machine on which the child was required to work. In one case the Supreme Judicial Court of Massachusetts held that a boy under 16 who was injured in the course of his employment, was entitled to damages because the violation of the age law for dangerous occupations was not a cause but merely a circumstance attendant upon his injury. In three cases on the other hand, the cause of injury was held to be the fact of illegal employment, and in these and one other the employer was required to ascertain the age of the child "at his peril".

In close connection with the principle of contributory negligence is that of the assumption of the risks of employment by the child. In two cases the courts of South Carolina and Illinois held that a child under the legal age could not assume the risks of his employment, while two other cases were decided against the minor by the United States Circuit Court of Appeals.

In this class also six cases should be noted where the duty of an employer to instruct a minor in the dangers of his employment was the principle at stake. In five of these the decision was in favor of the child, while in one the Court of Appeals of Maryland held that, although the employer was guilty of negligence in having failed to warn an 11-year-old boy who had sustained an injury, he was not legally liable as the direct cause was the act of another boy.

Hours of Labor

Two cases concerned the hours of labor of children. One case was brought by the Commonwealth of Massachusetts against a manager who employed two children aged 9 and 13 on a stage between the hours of seven p. m. and six a. m. contrary to law. The employer appealed on the ground that this type of employment was not included under the statute, but his appeal was denied. The other was that of a trapper boy in a mine, who was killed after 26 hours of consecutive employment. His administrator sued for damages in the United States Court of Appeals in West Virginia, but lost because the father, who had forced the boy to work excessively, would be the sole beneficiary.

General Age Limit

A great number of decisions involve the question of the general age limit for the employment of children. In nine instances the case was a suit for damages for injuries received, while in three, suit was brought by a parent or guardian for the death of a child killed in the course of employment. In eight of the former the court held that violation of the statute was a cause of action for damages.

In one case where the child was killed the Court of Appeals of Kentucky stated this principle very clearly, saying that where a statute prohibits a thing for the benefit of some person, violation of the statute may give cause of action to recover damages due to the violation. In another case of death, judgment was given in favor of the parents of the child but reversed on appeal because of a technical error, and in the third the decision was against an ore mining company which had tried to escape the law by claiming that only coal mines were subject to its provisions. The Supreme Court of Alabama held that an employer must "know a child's age, not merely think it".

Constitutionality of Statutes

The constitutionality of various statutes was challenged by employers, but in only two cases out of ten was this plea successful. One of these involved the requirements for work permits in Pennsylvania in 1906. Here a minor between the ages of 14 and 16, who had an affidavit of age, was required only to read and write simple English, but if not provided with such affidavit he was required to show a certificate of instruction in reading, spelling, writing, English grammar, geography, and arithmetic. This the court held to be in contravention of the fourteenth amendment to the United States Constitution which states that no state may deprive anyone of life, liberty, or the pursuit of happiness without due process of law. The other decision was recorded in the 1909 report. In the Juvenile Court, District of Columbia, it was declared that the law prohibiting the distribution of merchandise by boys under 14 did not include delivering newspapers. The court stated that the spirit as well as the letter of the law must be considered, and that "no one will contend that the nature of this employment is harmful to the child".

Of the remaining eight decisions three, handed down by the courts of California, Kentucky, and Illinois, upheld the statutes establishing the age limit for dangerous occupations; two, in New Jersey and North Carolina, upheld a general age limit for the employment of children; one, in Oregon, the right of the state to limit the hours of labor; and two, certain other laws. In the Oregon case the child labor law was attacked because it included more than one subject, contrary to the state constitution. The court held that everything in the act applied to child labor even though it regulated hours of work and attendance at school. In another case a man accused of having violated five clauses of the California child labor law claimed they were unconstitutional. The most interesting objections and the opinions of the court follow:

The law prohibiting the employment of children in certain occupations is discriminatory against those trades. *The court held that "certain occupations" included practically all those in which children were employed, so there was no discrimination.*

Allowing a child to work at the age of 12 if both his parents are disabled discriminates against the orphan. *Court held that if there are no parents the act is not operative.*

Exempting agriculture and domestic service from the prohibition of employment in school hours is undue discrimination. *Court held that it is not, as these occupations are usually carried on at home under the supervision of parents so that they are not liable to cause much injury.*

Compensation Difficulties

Cases involving difficulties with regard to the award of compensation for injuries were numerous. In six of these, disputes as to the amount of damages to be awarded were decided in favor of the person injured. Two interesting opinions were handed down, one by the Court of Appeals of Georgia, that, if a minor son's services are used for a purpose different from that for which he was hired, and injury ensues, the father has the right to sue for the loss of his son's services as he has a property right in them. In the other case the mother of a minor son whose services she had lost through his accidental death, was awarded periodical damages for the time remaining until he would have been 21; on appeal the Supreme Court of Washington awarded her damages for the whole period of her dependency.

Two cases which were decided adversely for the claimant involved in one instance damages for the death of a minor son on the basis of "last sickness and burial where there are no dependents". The father petitioned for an award on the basis of existing dependents but, as he was still able to save money weekly even though deprived of the income from his son, the court of Rhode Island rejected his petition. The other case was an appeal of the Industrial Insurance Commission of Washington from a decision allowing a father to recover for the death of his son while working in his (the father's) mill. The appeal was sustained by the Supreme Court of Washington on the ground that no contractual relation existed, hence the son was not a workman and did not come under the Workmen's Compensation Act, and, furthermore, as the father was guilty of negligence in employing his son contrary to the age law, he should not be reimbursed for any loss arising therefrom.

Three other cases are closely allied to the foregoing, two of them involving difficulties between employers and employers' liability insurance companies as to the proportion of damages awarded for injuries which each company should pay. In one case the employer tried to force the insurance company to pay where the employment of the child was illegal, and the courts upheld the insurance company. In the other, after prolonged litigation a verdict was awarded the employing company, as the insurance company had tried to withdraw after ten months' negotiations, claiming that the employment of the child was illegal. The last case under this heading was of interest because of a ruling on dangerous machinery. A boy was injured by a machine and was awarded damages. The company appealed, claiming that the machine was "known, approved, and in general use". When it was proved that it often hurled back wood, denting a wall 20 feet away, the Supreme Court of North Carolina held that a machine, even though it be "known and approved", may not be used if it is dangerous.

Miscellaneous

Eight miscellaneous cases were decided in favor of the minor involved and two were decided against him. One other case brought before the Court of Appeals of New York turned on the question of who was liable for a violation of the age law occasioned by a

foreman's hiring a girl who was under age to work in a factory of which a superintendent, not the owner, was in charge. The superintendent was arrested for the offense but discharged as not liable, as he was not the owner or one "beneficially interested" in the concern.

Of the two cases decided against the minor, the plaintiff in one was nonsuited by the Kansas City (Mo.) Court of Appeals, because death had been caused solely by the negligence of fellow-servants. In the other it was declared by the Supreme Court of Appeals of Virginia that the death of a student-fireman under 21 years, who had misstated his age, thus violating a rule of the company that no one under 21 should be allowed on a locomotive, was not a cause for recovery.

Two of the eight decisions in the minor's favor were based on technicalities. In one of the others the law prohibiting the employment of children on the stage in Louisiana was upheld, and in two, agreements which had been fraudulently procured were thrown out. In another, an agreement which had previously been made by the parents of a minor who had been killed when employed, whereby they promised not to hold the company responsible for any injury received by the boy, was declared void by the Court of Civil Appeals of Texas, as it is "contrary to public policy to uphold this type of contract". The case of a man who was run over by a street car operated by a motorman 18 years of age, with 20 days' experience, was decided against the company. Finally, in the case of a boy who had been locked up by a newspaper company until an extra edition was ready, so that he would not be able to sell the papers of rival publishers, the decision was against the newspaper in the Court of Appeals of Alabama.

WHEN ADDITION BECOMES MULTIPLICATON

YOU, who have worked in any campaign, large or small, know that added helpers, more money, bring a gain of *more than proportionate strength.* It is an example which defies the rules of arithmetic.

YOU know what the National Child Labor Committee has done in securing better working conditions, better schooling, for the laboring children.

HAVE you ever thought *how much more could have been done, if more people had helped?*

BECAUSE of your own interest, and because of the work which must still be done to insure the protection of all the children, won't you help us **MULTIPLY** our strength by **ADDING** at least **ONE MORE MEMBER** to the Committee?

Send for our leaflets and pamphlets. Your friends will want to help when they know the facts.

To V. EVERIT MACY, TREASURER,
NATIONAL CHILD LABOR COMMITTEE,
105 East 22d Street, New York.

I enclose $.....to help give a chance to the little boys and girls for whom you are working. Enroll me in your membership and send me the CHILD LABOR BULLETIN.

Signed .....

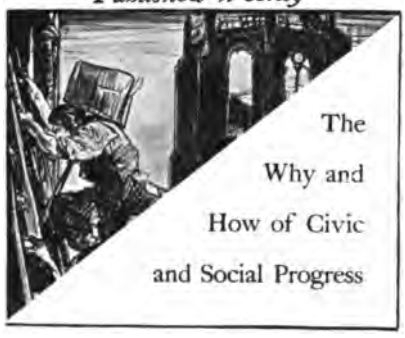
Associate Membership,		$2
Contributing	"	$5
Sustaining	"	$25
Donor	"	$100

Address.....

.....

THE SURVEY

Published Weekly



A NATIONAL COOPERATIVE JOURNAL THAT LINKS CHILD LABOR REFORM TO EFFORTS IN ALL FIELDS OF SOCIAL AND CIVIC PROGRESS.

In our complex civilization child labor overlaps on all sides other wrongs.

You can reinforce your work for children by keeping posted through The Survey on

Workmen's Compensation		**Occupational Diseases**
Vocational Training		**Clean-up Campaigns**
Widows' Pensions	**Peace**	**Labor Legislation**
Social Surveys	**Strikes**	**Profit Sharing**
Unemployment	**Orphanages**	**Summer Camps**
Recreation	**Minimum Wage**	**Girls' Club**
Probation	**Public Parks**	**Boys' Club**
Fires	**Welfare Activities**	**Wages**

The Survey Staff

PAUL U. KELLOGG, *Editor*

Associate Editors

EDWARD T. DEVINE, JANE ADDAMS, GRAHAM TAYLOR

Regular Contributors of Articles

LOUIS D. BRANDEIS — FLORENCE KELLEY
LEWIS W. HINE — KATE BARNARD
HASTINGS H. HART — JOSEPH LEE

$1.00 enclosed. Please send **The Survey** for 6 months to

.....

.....

Address

The Survey

105 East 22d Street, New York

6 Months' Trial, $1.00

$3.00 a Year

SAMPLE COPIES FREE

OPPORTUNITY GONE TO WASTE

The actual average daily attendance for October at this fine two-room school in Brush. Ninety others who should be here are "in the beets." Colorado has made a good investment in attractive rural schools but wastes it by failure to compel attendance.

331.32
N21c

The Child Labor Bulletin

Volume Four
Number Four
In Two Parts

FEBRUARY, 1916

Issued Quarterly
$2 per Year
Part II

...AL ROOM
...ED
10 1916
...GE N...CHS

A BRIEF

FOR

The Keating-Owen Bill

By

THOMAS I. PARKINSON,
Legislative Drafting Bureau,
Columbia University.

PUBLISHED BY

National Child Labor Committee

INCORPORATED

105 EAST 22D STREET, NEW YORK CITY

Entered as second-class matter, October 29, 1913, at the Post-office at New York, N. Y., under the Act of August 24, 1912.

THIS NUMBER FIFTY CENTS

COPYRIGHT 1916
BY THE
NATIONAL CHILD LABOR
COMMITTEE

PRESS OF CLARENCE S. NATHAN, INC., NEW YORK.

A BRIEF FOR THE KEATING-OWEN BILL

THOMAS I. PARKINSON
Legislative Drafting Bureau, Columbia University

The Palmer-Owen bill prohibiting shipment in interstate commerce of the products of child labor passed the House of Representatives in the last Congress and a similar bill (now known as the Keating-Owen bill) has been reported favorably by the House Committee on Labor.* This Brief undertakes to consider the various aspects of the constitutional power of Congress to regulate interstate commerce for the accomplishment of the purposes of these bills.

The conclusions of the Brief may be summarized as follows:

I. The power of Congress over interstate commerce is complete and exclusive.

II. The power of Congress to regulate interstate commerce, as stated in the commerce clause of the Federal Constitution, includes power to prohibit absolutely the shipment or transportation in interstate commerce of specified persons or property.

III. The power of Congress over interstate commerce may be exercised in the interest of the public health, morals, safety and welfare as well as in the interest of that commerce and its instrumentalities.

IV. Whatever its incidental effects, a Congressional regulation of interstate commerce is never a violation of the reserved rights of the states.

V. The power of Congress to prohibit shipment or transportation in interstate commerce is limited only by the requirement of the fifth amendment that such prohibition shall not constitute a deprivation of individual rights without due process of law; i. e., that such prohibition shall not be an arbitrary or unreasonable interference with the individual's rights of property or liberty of contract.

VI. The prohibition of shipment in interstate commerce of the products of child labor is a reasonable exercise of the Congressional commerce power in the interest of the public welfare.

*Since this Brief was written the Bill has passed the House (vote, 337 to 46) and is before the Interstate Commerce Committee of the Senate (February 16).

I. The power of Congress over interstate commerce is complete and exclusive.

Congress has supreme and *plenary* power over interstate commerce. Article I, section 8, clause 3 of the federal Constitution provides: "That Congress shall have power . . . to regulate commerce with foreign nations among the several states and with the Indian tribes."

Under the articles of Confederation each state had complete control over its own commerce. The exercise of this control resulted in embarrassing and destructive consequences and led to an oppressed and degraded state of commerce. (*Brown vs. Maryland, 12 Wheat. 419, 445 (1827)*). The prevailing motive for the adoption of the present Constitution was to "rescue it from the * * * perpetual jarring and hostility of commercial regulation. * * * The entire purpose for which the delegates assembled at Annapolis, was to devise means for the uniform regulation of trade. They found no means but in a general government; and they recommended a convention to accomplish that purpose. * * * We do not find, in the history of the formation and adoption of the Constitution, that any man speaks of a general concurrent power, in the regulation of foreign and domestic trade, as still residing in the states. The very object intended, more than any other, was to take away such power. If it had not so provided, the Constitution would not have been worth accepting." *Chief Justice Marshall in Gibbons vs. Ogden, 9 Wheat. 1, 11, 12, 1824.*

It is no longer necessary to cite cases to support the declaration that the commerce clause has vested in Congress a broad, complete and exclusive power over interstate and foreign commerce; but the following from one of Chief Justice Marshall's opinions is worth repeating here:

> "It may be doubted whether any of the evils proceeding from the feebleness of the federal government, contributed more to that great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, a matter of surprise that the grant should be as extensive as the mischief, and should comprehend *all* foreign commerce and *all* commerce among the states. To construe the power so as to impair its efficacy would tend to defeat an object, in the attainment of which the American *public* took, and justly took, that strong interest which arose from a full conviction of its necessity." *Brown vs. Maryland 12 Wheat. 419, 446 (1827).*

Whatever may have been the primary reason for the insertion of this clause in the Constitution it is now definitely settled that it has vested in Congress a broad, complete and exclusive power over interstate commerce.

In the early case of *Gibbons vs. Ogden* (*supra 196*) Chief Justice Marshall discusses the Congressional power over interstate commerce as follows:

> "What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the constitution. * * * If as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several states is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people and the influence which their constituents possess at elections are in this as in many other instances, as that for example of declaring war, the sole restraints on which they have relied to secure them from its abuse." *Quoted with approval in the Lottery Case (1902) 188 U. S. 321, 353.*

This view of the commerce power was affirmed by the Supreme Court in the late case of *Hoke vs. United States 227 U. S. 308, 320 (1913)* where it is said: "The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary."

In the exercise of the power thus broadly granted and interpreted Congress has a wide discretion. A regulation of interstate commerce is not subject to attack in the courts on the ground that it is not the most advisable which Congress might have adopted under the circumstances. Thus in the *Lottery Case, 188 U. S. 321, 353 (1903)* the court said:

> "They (prior decisions) also show * * * that in determining the character of the regulations to be adopted Congress has a large discretion which is not to be controlled by the courts simply because in their opinion such regulations may not be the best or most effective that could be employed."

The fact that an act of Congress regulating interstate commerce has the incidental effect of affecting or regulating intrastate com-

merce does not render it invalid. In a recent case Mr. Justice Hughes, citing numerous authoritative precedents, said:

> "The completely internal commerce of a state then may be considered as reserved for the state itself. This reservation to the states manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of federal power. The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from a supremacy of the national power within its appointed sphere." ***Minn. Rate Cases, 230 U. S. 352, 398 (1913).***

These cases establish in our constitutional law the principle that the power of Congress to regulate interstate commerce is a broad and complete power acknowledging no limitations except those contained in the federal Constitution. This power, says Chief Justice Marshall, "is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution." In a very late case, Mr. Justice McKenna said: "The power is direct; there is no word of limitation in it and its broad and universal scope has been so often declared as to make repetition unnecessary." In a similar case Mr. Justice Harlan said that "in determining the character of the regulations to be adopted Congress has a large discretion which is not to be controlled by the courts"; and in a very recent case Mr. Justice Hughes said: "The full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations." These declarations by the Supreme Court ought to be kept prominently in mind in approaching the consideration of the constitutionality of the proposed federal child labor legislation, and particularly they ought to be kept constantly before us when considering the validity of objections to its constitutionality based upon such general assertions as that the framers of the Constitution did not intend such extensive use of the federal

power; that there are other means by which the desired result can be more effectively or expeditiously accomplished; that the commingling of interstate and intrastate business makes such legislation in effect a regulation of manufacture for the intrastate trade; that the proposed legislation would be an interference with the reserved powers of the states, and similar contentions.

II. The power of Congress to regulate interstate commerce, as stated in the commerce clause of the federal Constitution, includes power to prohibit absolutely the shipment or transportation in interstate commerce of specified persons or property.

The states, by adopting the federal Constitution, delegated to Congress the power "to regulate commerce * * * among the several states." We are, for the moment, concerned only with the interpretation of the word "regulate" and the determination of the question whether it should be interpreted to include power to prohibit. The answer must be found in the provisions of the Constitution itself as interpreted by the practice of Congress and the decisions of the Supreme Court. That the power under the commerce clause to regulate includes the power to prohibit is shown both by the application of general principles of interpretation and by authoritative precedent.

A. General principles of interpretation justify the conclusion that the power to regulate interstate commerce includes power to prohibit it.

1. *The power of Congress over interstate commerce is the same as that enjoyed by the individual states prior to the adoption of the federal Constitution.*

Under the articles of confederation, each state had complete control over its commerce with the other states and could prevent the importation of the products of another state. The exercise of the power to regulate commerce most familiar to the framers of the federal Constitution was the total or partial prohibition of traffic in particular articles. Several of the states had adopted such prohibitions. The only clause in the Constitution which took from the individual states any of their

power over commerce is that which placed the power to regulate interstate commerce in the federal Congress. The Supreme Court has decided that the power of Congress under this clause is exclusive; no residuum of power over interstate commerce has been left to the states.

If the individual states prior to the adoption of the federal Constitution possessed power to prohibit imports from other states and if the entire power of the states over interstate commerce was transferred to and vested in the federal government, what has become of the power to prohibit transportation across state lines if it was not included in the grant to Congress of power to regulate commerce between the states? It may be argued that when the individual states surrendered this power to prohibit imports it thereupon ceased to exist in either the federal or state governments, but that the framers of the Constitution intended to transfer to Congress this power to prohibit transportation across state lines is demonstrated by Article I, section 9 of the Constitution which is quoted and discussed in the following section of this brief. Further argument along these lines would seem to be unnecessary and academic. Unquestionably the states possessed the power to prohibit. It is equally certain that they gave up that power on the adoption of the federal Constitution. It is, however, important that the only provision in the Constitution which vests in Congress the power over commerce previously exercised by the states is the clause which authorizes Congress to "regulate" interstate commerce. Many learned reasons may be advanced to prove that "regulate" does not mean "prohibit" but the fact is that "regulate" was selected as the word to transfer to Congress the full power previously possessed by independent states and that of course included power to prohibit.

2. *That the power to regulate was intended to include the power to prohibit is indicated by other provisions of the Constitution.*

Article I, section 9 of the federal Constitution provides: "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." A prohibition by Congress of the migration or importation of such

persons could be based only on the power to regulate interstate and foreign commerce and if the framers did not intend the power to regulate to include the power to prohibit, this express restriction on the power to prohibit migration or importation of certain persons was entirely unnecessary and superfluous. It must be assumed that the framers of the Constitution believed that there was necessity for this provision, and that they so believed indicates that they intended that the power granted to Congress to regulate commerce in an earlier section of the Constitution should include the power to prohibit the migration or importation of these persons. This clause cannot be waived aside as relating only to importation from foreign countries into this country. It is perfectly definite and relates as well to "the migration * * * of such persons as any of the states * * * shall think proper to admit."

Referring to this section, Chief Justice Marshall *in Gibbons vs. Ogden, 9 Wheat. 1, 216 (1824)* said:

> "(This section) has always been considered as an exception from the power to regulate commerce and * * * so far as an exception from a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulation of vessels employed in transporting men, who pass from place to place voluntarily, and to those who pass involuntarily."

3. *The power of Congress over interstate commerce is as extensive as the power over foreign commerce and it is established that the power to regulate foreign commerce includes the power to prohibit.*

Congress derives its power to regulate interstate commerce from the same clause of the Constitution from which is derived its power over foreign commerce. The power over interstate and foreign commerce is granted in precisely the same words and the Supreme Court has repeatedly declared that these powers are identical. In *Bowman vs. Chicago and Northwestern Railway Company, 125 U. S. 465, 482 (1888)* the court said:

> "The power conferred upon Congress to regulate commerce among the states is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms, and the two powers are undoubtedly of the same class and character and equally extensive."

And again in *Crutcher vs. Kentucky, 141 U. S. 47, 57 (1891)* the court said:

> "It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."

Similar statements by the court, to the effect that the power granted to Congress over interstate commerce is as extensive as the power over foreign commerce, may be found in:

> Gibbons vs. Ogden, 9 Wheat. 1, 194, 228 (1824)
> License Cases, 5 Howard 504, 578 (1847)
> Brown vs. Houston, 114 U. S. 622, 630 (1885)
> Pittsburg & Southern Coal Company vs. Bates, 156 U. S. 577, 587 (1895)
> Lottery cases, 188 U. S. 321, 351 (1903)

The regulation of foreign commerce by Congress has frequently assumed the form of prohibition. The non-importation and embargo acts, which were upheld by the Supreme Court, are striking illustrations of the exercise of this power. In the case of *Gibbons vs. Ogden, 9 Wheat. 1, 192 (1824)* Chief Justice Marshall, referring to the argument that embargoes are an instrument of war depending for their validity on the war-making power said:

> "They are sometimes resorted to without a view to war and with a single view to commerce. * * * When Congress imposed that embargo which for a time engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce and the avoiding of war."

Again in *U. S. vs. Marigold, 9 Howard 560, 566 (1850)* the court said:

> "Since the passage of the embargo and non-intercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation."

In *U. S. vs. William, 28 Fed. 614 (1808)* the then recent Embargo Act was sustained as a valid regulation of foreign commerce.

In the more recent case of *Buttfield vs. Stranahan, 192 U. S. 470 (1904)*, an act of Congress prohibiting the importation of inferior grades of tea was held constitutional.

In *Oceanic Navigation Company vs. Stranahan, 214 U. S. 320 (1909)*, an act excluding aliens was sustained, and in *The Abby Dodge, 223 U. S. 166 (1912)*, a conservation measure excluding deep sea sponges taken by divers was upheld.

No more effective argument in favor of the power can be advanced than a statement of the frequent use of the power particularly in recent tariff acts. Among the recent prohibitions may be mentioned that against foreign convict-made articles; that against importation into the United States of fur seal skins taken in violation of law; and that against the importation of the eggs of game birds.

This power of Congress to prohibit importation as a part of the power to regulate foreign commerce has become so well established that the references to it in the latter cases are hardly more than a statement recognizing the existence of the power. Thus in *Weber vs. Freed, Case No. 644, Dec. 13, 1915*, the court, in upholding the constitutionality of the act prohibiting the introduction of prize-fight films into the United States, said that Congress possesses a complete power over foreign commerce and "its authority to prohibit the introduction of foreign articles" is "recognized and enforced by many previous decisions of this court."

Since the power to regulate foreign commerce may be exercised to the extent of absolute prohibition and since the power over interstate commerce is equally extensive, it too may be exercised to the extent of prohibition. So far, therefore, as the commerce clause itself is concerned and without considering for the moment other clauses of the Constitution which affect the question, it may be stated with confidence that the power over interstate commerce may be exercised by prohibitive measures to the same extent as in the case of foreign commerce. This is not to assert that in dealing with interstate traffic Congress possesses the same unrestricted and arbitrary power of prohibition which it may exercise over foreign commerce. The reason for the difference, however, is found not in the commerce clause but in the due process clause of the Con-

stitution which restrains Congress from arbitrarily depriving the individual of vested property rights. We have detached the restrictive effect of the due process clause from our present consideration because of the desirability of first obtaining a clear view of the power delegated to Congress by the commerce clause. Whether the power to regulate commerce includes power to prohibit commerce in specified articles is one question; and whether Congress may prohibit commerce in a specified article is another. The former involves the question of federal and state jurisdiction over commerce; the latter involves the totally different question as to the extent of the right of the individual under the fifth amendment to insist that Congress shall not exercise its otherwise admitted power over commerce in such manner as to deprive the individual of his property or liberty without due process. The former raises the issue between Nation and State under the commerce clause and the reserved powers clause; the latter raises the issue between the Nation and the individual under the commerce clause and the fifth amendment.

B. Precedent justifies the conclusion that the power to regulate includes the power to prohibit interstate commerce.

The foregoing theories of interpretation of the commerce clause and the precedents derived from its exercise over foreign commerce standing alone, compel the conclusion that the power to *regulate* includes the power to *prohibit* in interstate as well as foreign commerce; but fortunately we have additional and more specific authority to the same effect in a number of decisions of the Supreme Court in which prohibitions of transportation or shipment in interstate commerce of specified persons or things have been sustained. It is sufficient to list the prohibited persons and things and cite the cases sustaining their exclusion from interstate commerce.

1. *Prohibition of transportation of lottery tickets or advertising matter relating to lotteries.*

The act of Congress of 1895, *28 Stat. L. 963, Ch. 191*, forbade, under penalty of criminal punishment, the bringing into the United States for the purpose of disposing thereof, or the carrying from one state to another of any lottery ticket or advertisement

relating to lotteries. The Supreme Court held that lottery tickets and advertising matter were subjects of commerce, that the regulation of their carriage from state to state was a regulation of interstate commerce and that Congress had the power to prohibit their carriage in such commerce. *Lottery cases 188 U. S. 321 (1903).*

2. *Obscene literature and articles designed for immoral and indecent use.*

The act of February 8, 1897, *29 Stat. L. 512, Ch. 172,* and March 4, 1909, *37 Stat. L. sec. 249,* prohibiting the carrying of such literature and articles from one state to another was held constitutional in *U. S. vs. Popper, 98 Fed. Rep. 423 (1899).* This act was cited with approval in *Hoke vs. U. S., 227 U. S. 308 (1913).*

3. *Adulterated or misbranded food and drugs.*

The Act of June 30, 1906, *34 Stat. L. 768, Ch. 3915,* prohibits the shipment or delivery for shipment in interstate commerce of any adulterated or misbranded food or drug under penalty of criminal punishment. This act has been interpreted and its penalties enforced by the Supreme Court in the case of *Hipolite Egg Company vs. U. S., 220 U. S. 45 (1911),* and in *U. S. vs. Lexington Mill and Elevator Company, 232 U. S. 399 (1914).* These cases are authority for the right of Congress to condemn, when found in interstate commerce, the articles whose shipment is prohibited, and they are generally accepted as authority for the constitutionality of the prohibition. In *Seven Cases vs. U. S. Nos. 50 and 51, Jan. 10, 1916,* the Supreme Court upheld the constitutionality of an amendment to this act which provided that misbranding includes any statement regarding the curative or therapeutic value of the article or ingredients which is false and fraudulent.

4. *Transportation of women from one state to another for immoral purposes.*

The Act of Congress of June 25, 1910, *36 Stat. L. 825, Ch. 395,* prohibited the transportation in interstate commerce, for immoral purposes, of women and girls. This act was held constitutional in *Hoke vs. U. S. 227 U. S. 308 (1913).*

5. *Transportation in interstate commerce of a commodity in which the carrier thereof has a legal interest.*

The Act of Congress of June 29, 1906, *34 Stat. L. 584, Ch. 3591*, commonly known as the Hepburn Act, prohibited the carriage in interstate commerce of commodities in which, at the time of such transportation, the carrier had a legal interest direct or indirect. This prohibition was held constitutional in *U. S. vs. Delaware & Hudson Railroad Company, 213 U. S. 366 (1909)*.

6. *Indirect prohibition of the transportation of intoxicating liquors in interstate commerce.*

In 1890 Congress passed the Wilson Act (*26 Stat. L. 313, Ch. 728*) which provided that upon arrival within a state intoxicating liquors should become subject to the police regulations of the state and should not be exempt therefrom under the rules protecting original packages shipped in interstate commerce, even after their arrival in the state to which they were consigned. The Wilson Act was a declaration by Congress that despite the exclusive power of Congress over such original packages in their transit to their point of destination, they should become subject to the state police regulations as soon as they reached the consignee. In *In re Rahrer, 140 U. S. 545 (1891)*, this act was held constitutional and a state law prohibiting the sale of intoxicating liquor in the original package was held to apply to a sale in the original package of liquor brought from another state. The power of Congress thus to subject a legitimate article of commerce to laws which practically prohibited its transportation into a state, implies a power on the part of Congress directly to prohibit such transportation. And Congress has prohibited by the Webb-Kenyon Act of 1913 (*37 Stat. L. 699, Ch. 90*) the shipment into a state of intoxicating liquor intended to be used in such state contrary to the laws thereof. The constitutionality of this latter act, like that of the Pure Food and Drugs Act, has not been questioned, but the Supreme Court by implication has sustained its constitutionality. In *Adams Express Company vs. Kentucky, 238 U. S. 190 (1914)* the court was compelled to interpret and apply the Webb-Kenyon Act in a case involving the power of Kentucky to exclude shipments of intoxicating liquors from that state when they were not

intended to be used in violation of the state laws. The Kentucky statute was held to be a regulation of interstate commerce and unconstitutional because it did not come within the terms of the Congressional act. There can be no doubt, considering the attitude of the court toward the Wilson Act and in the case cited, that the Webb-Kenyon Bill would be sustained as constitutional.

7. *Prohibition of shipment or transportation of meats which have not been inspected.*

The Meat Inspection Act of 1906 prohibits the shipment or transportation in interstate commerce of meat "which has not been inspected, examined and marked 'inspected and passed'." Violation of the provisions of this act is penalized irrespective of the knowledge on the part of the shipper or carrier.

8. *Prohibition of the shipment or transportation of cattle in interstate commerce except under regulations established by the secretary of agriculture.*

The Cattle Quarantine Acts of 1903 and 1905 authorize the secretary to make rules and regulations and to establish a cattle quarantine, and provide a penalty for violation thereof. The enforcement of these acts is secured through the refusal of carriers to accept shipments of cattle unless accompanied by the certificate of the department of agriculture.

9. *Prohibition of the shipment or transportation in interstate commerce of unmarked imported nursery stock or quarantined nursery stock.*

The Nursery Stock Act of 1912 prohibiting such shipment of transportation imposes a penalty for violation which is enforced against the shipper even in the absence of knowledge on his part of his violation.

10. *Prohibition of the shipment or transportation of game in interstate commerce.*

The "Lacey" Act (*section 242 of the Criminal Code of the United States*) prohibits the shipment or transportation in interstate commerce of (1) "foreign animals or birds, the

importation of which is prohibited" and (2) "dead bodies or parts thereof" of "wild animals or birds" killed or shipped in violation of the laws of the state where killed or from which shipped. Violation is punished in the case of the shipper irrespective of his knowledge.

11. *Prohibition of the shipment or transportation in interstate commerce of renovated butter.*

The Act of 1902 prohibits shipment or transportation in interstate commerce of renovated butter unless marked in the way specified in the act. Violations are punished irrespective of knowledge.

12. *Prohibition of shipment in interstate commerce of specified virus, serum, etc.*

The Act of 1913 prohibits shipment of "worthless, contaminated, dangerous or harmful virus, serum, etc." for domestic animals; or the shipping of any virus, serum, etc. unless prepared under regulations of the secretary of agriculture at an establishment holding a license from the secretary of agriculture.

13. *Prohibition of importation and interstate transportation of prize-fight picture films.*

The Act of July 31, 1912 (*37 Stats. L. 240*) makes it unlawful to bring into the United States or to ship or transport in interstate commerce picture films representing prize fights designed to be used or capable of use for public exhibition. This act was held constitutional in its application to importations in the case of *Weber vs. Freed, No. 644, October term 1915, Opinion December 13, 1915.*

In view of these decisions it is unquestionable that, so far as the commerce clause is concerned, a regulation of interstate commerce may take the form of an absolute prohibition of shipment or transportation in such commerce. As the Supreme Court has said:

> "It can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation." (*U. S. vs. Marigold, supra.*)

III. The power of Congress over interstate commerce may be exercised in the interest of the public health, morals, safety and welfare as well as in the interest of that commerce and its instrumentalities.

It is frequently stated in the opinions of the supreme court that Congress possesses a police power under the commerce clause. This means in effect that Congress may exercise its express powers—of which the commerce power is one—for the purpose of protecting and furthering the general welfare of the people. The use of its powers for such general purposes is analogous to the use by the states of their so-called police power. This power in the states is simply the inherent power of government to legislate for the common good, notwithstanding guarantees of individual rights and liberties contained in our constitutions. In the case of Congress which possesses no inherent power but is limited to powers expressly granted by the federal Constitution, this so-called police power is merely a right to make use of its express powers to provide for the public welfare. In both cases the purpose of exercising the power is the same and it is, therefore, convenient, as it has become usual—to refer to the exercise of the commerce and other express powers in the interest of the general welfare as the police power of Congress. This phrase will not prove confusing if we remember that by it we mean simply that use of the commerce power which aims not at benefiting or advancing commerce itself or its instrumentalities, but at advancing the general welfare through regulation of commerce.

Thus it has been held that under the power to establish post-offices and post-roads Congress may prohibit the transportation through the mails of all letters or circulars concerning lotteries.

Ex parte Jackson, (1877) 96 U. S. 727.

In re Rapier, (1892) 143 U. S. 110.

Similarly, the use of the mails may be denied to any person or company engaged in conducting any lottery or device for obtaining money or property by means of false pretenses.

Public Clearing House v. Coyne, (1904) 194 U. S. 497.

From the earliest days of our nation it has been regarded as within the power of Congress in regulating foreign commerce to enact laws, not for the exclusive benefit or advancement of that commerce, but for the protection of the interests of the country. The embargo and non-intercourse laws are examples of such legis-

lation. Thus, *in U. S. vs. Marigold, (1850) 9 Howard 560, 566,* the court said:

> "Since the passage of the embargo and non-intercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimitate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation."

In U. S. vs. Williams (1808) 28 Fed. Cases 614, 621, Judge Davis, in sustaining the constitutionality of the then recent embargo act, said directly:

> "Further, the power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advancement; but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other purposes of general policy and interest."

In an essay on the Commercial Power of Congress, Mr. David Walter Brown, of the New York Bar, thus summarizes the early exercise of the commerce power:

> "The policy of restriction included measures of two kinds: (1) the prohibition of the importation of foreign commodities and of the entry of foreign vessels into our ports; and (2) embargoes upon commerce. They illustrate, upon a grand scale and in a drastic manner, the application of the commercial power of Congress to the attainment of great national ends through restrictions placed upon various branches of trade, and extending even to total prohibition; and in so far as the precedents furnished by them are authoritative, they indicate the unsoundness of the view that the power of Congress to regulate commerce is restricted to the passing of measures to advance it, but stops short of the power to prohibit it."

That this conclusion is correct is shown by the following quotation from the case of *Buttfield vs. Stranahan, (1904) 192 U. S. 470,* where the Supreme Court, in holding constitutional an act of Congress which prohibited the importation of inferior teas, said: (*p. 493*)

> "*Congress* has also, in other than tariff legislation, exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion. This is illustrated by statutory provisions which have been in force for more than fifty years, regulating the degree of strength of drugs, medicines and chemicals entitled to admission into the United States and excluding such as did not equal the standards adopted."

If the power of Congress over foreign commerce may be used as "an instrument for the purposes of general policy" and if the power over foreign commerce is the same as that over interstate commerce, it would be fair to conclude from these cases alone that the power over interstate commerce might likewise be used as "an instrument for purposes of general policy."

We have, however, decisions in the Supreme Court directly affirming the existence in Congress of a police power which may be exercised through its power over interstate commerce. The first important decision on this subject was the *Lottery Case, (1903) 188 U. S. 321,* in which it was held that Congress has power to prohibit the interstate transportation of lottery tickets. In delivering the opinion of the court, Mr. Justice Harlan said:

> "If a state, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money, in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of lottery tickets from one state to another. (*p. 356*) * * * As a state may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States, against the 'widespread pestilence of lotteries' and to protect the commerce which concerns all the states, may prohibit the carrying of lottery tickets from one state to another. * * * We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. (*p. 357*). * * * If the carrying of lottery tickets from one state to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense, to cause lottery tickets to be carried from one state to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce * * * which has grown into disrepute and has become offensive to the entire people of the nation." (*p. 358*)

This case definitely decides that Congress may exercise its power over interstate commerce for the protection of the morals and general welfare of the people. Lottery tickets, as specific articles of commerce, were harmless in themselves, and the legislation in question was not enacted for the benefit of interstate commerce itself, or

tending to its advancement. The purpose, as appears from the foregoing quotation, was the suppression of lotteries. Congress had no power to prohibit directly the raising of money by lotteries, but under the power to regulate commerce it could deny to such business the privilege of using the facilities of interstate commerce.

In the Pure Food and Drugs Act (*June 30, 1906, 34 Stat. L. 768*) Congress prohibited the shipment in interstate commerce of adulterated or misbranded food and drugs. The constitutionality of such legislation as a regulation of commerce has been affirmed expressly by the lower courts and impliedly by the Supreme Court.

Hipolite Egg Co. vs. U. S. (1911) 220 U. S. 45
U. S. vs. Johnson (1911) 221 U. S. 488
U. S. vs. Lexington Mill Co. (1914) 232 U. S. 399
Seven Cases vs. U. S. Nos. 50 and 51, January 10, 1916
U. S. vs. Heinle Spec. Co. (1910) 175 Fed. 299
Shawnee Milling Co. vs. Temple (1910) 179 Fed. 517
U. S. vs. Sacks of Flour (1910) 180 Fed. 518
U. S. vs. Seventy-four Cases (1910) 181 Fed. 629

In the case of *McDermott vs. Wisconsin*, 228 U. S. 115 (1912) the court in declaring a state statute to be in conflict with the federal Pure Food and Drugs act, said (*p. 128*):

> "That Congress has ample power in this connection is no longer open to question. That body has the right not only to pass laws which shall regulate legitimate commerce among the states and with foreign nations, but has full power to keep the channels of such commerce free from the transportation of illicit or harmful articles, *to make such as are injurious to the public health outlaws of such commerce, and to bar them from the facilities and privileges thereof.*"

The most recent illustration of the exercise of this police power of Congress which has been sustained by the Supreme Court is to be found in the act known as the White Slave Traffic Act (*June 25, 1910, 36 Stat. L. 825, Ch. 395*) by which Congress made it a criminal offense to transport women in interstate commerce for immoral purposes. This act was held constitutional in *Hoke vs. U. S. (1913) 227 U. S. 308* and in *Wilson vs. U. S. (1914) 232 U. S. 563*. In the first case the court said:

> "There is unquestionably a control in the states over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the states, but there is a domain which the states

cannot reach and over which Congress alone has power; and if such power be exerted to control what the states cannot, it is an argument for—not against—its legality. Its exertion does not encroach upon the jurisdiction of the states. We have cited examples; others may be adduced. The Pure Food and Drugs Act is a conspicuous instance. In all of the instances a clash of national legislation with the power of the states was urged, and in all rejected."

"Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral." * * * "Surely if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women." (*p. 322*) * * * "The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation 'among the several states'; that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulation." (*p. 323*)

In the Wilson case it was said:

"As has already been decided, it (the Act in question) has the quality of a police regulation, although enacted in the exercise of the power to regulate interstate commerce." (*p. 567*)

Although Congress cannot directly prohibit prostitution within a state, it can constitutionally attempt to suppress prostitution by prohibiting the transportation of women in interstate commerce for that purpose.

The cases cited, it is submitted, definitely and necessarily establish the principle that Congress can regulate interstate commerce in the interest of public health, safety, morals or welfare; in other words Congress may regulate interstate commerce in such manner as to prevent its being used to maintain or to further conditions which are detrimental to the general welfare of the community. Mr. Justice Hughes, in the recent case of *Seven Cases vs. U. S. (Nos. 50 and 51) October term, 1915, Opinion January 10, 1916*, referring to the decision in the white slave case said:

"The court concluded with the reassertion of the simple principle that Congress is not to be denied the exercise of its constitutional authority

over interstate commerce, and its power to adopt not only means necessary but convenient to its exercise, because these means may have the quality of police regulations."

IV. Whatever its incidental effects, a Congressional regulation of interstate commerce is never a violation of the reserved rights of the states.

We have seen that Congress under the commerce clause possesses a broad, complete and exclusive power to regulate interstate commerce; that this power to regulate includes power to prohibit the shipment or transportation of specified persons or property; and that in the exercise of its power to regulate interstate commerce, Congress is not confined to measures which have for their purpose the good of interstate commerce and its instrumentalities, but may, in addition to such measures, regulate such commerce in the interest of promoting the public health, safety, morals and welfare. From these established principles, it is apparent that federal legislation prohibiting the shipment in interstate commerce of the products of child labor is within the jurisdiction over commerce transferred by the states to the federal government and vested in Congress by the federal Constitution. There can be no doubt that such legislation regulates interstate commerce within the interpretation which the supreme court has uniformly given to the commerce clause. As a regulation of interstate commerce, it is unquestionably within the jurisdiction of the federal control over commerce.

It is idle to say that it interferes with the reserved powers of the states. It is true, the federal Constitution in Article X of the amendments provides that "powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people." This provision becomes important, however, only after it has been determined that the power to do that which is proposed has not been delegated to Congress. The very essence of the argument in favor of the constitutionality of federal child labor legislation is that it is included within the power of Congress to regulate commerce. If it is within the Congressional power, which by the Constitution was delegated to the exclusive control of Congress, then it cannot fall within that realm of powers not delegated but reserved to the states. In the consideration of objections of this sort it must be remembered that

Congress is not making the employment of children illegal but is merely excluding from interstate commerce the products of child labor. The fact that the Congressional regulation may prevent or restrict the employment of children in the manufacture of goods within the state does not affect the constitutionality of the Congressional action. So long as it is a regulation of commerce and so long as it does not constitute a deprivation of property without due process, the power of Congress is supreme. Professor Goodnow, now President of Johns Hopkins University, in his *Social Reform and the Constitution, p. 91*, says: "Men's minds are peculiarly twisted when they argue under a Constitution containing such a provision (the commerce clause) that a regulation purporting to be a regulation of interstate commerce is not such because it will necessarily have the incidental effect of regulating conditions of manufacture. The only reason why it will have this incidental effect is because in the economic conditions of the present day, manufacturing has ceased to be a state and has become an interstate matter."

In the *Northern Securities Case (1903) 193 U. S. 197, 342*, the court asked:

> "Is there, then, any escape from the conclusion that, subject only to such restrictions, the power of Congress over interstate and international commerce is as full and complete as is the power of any state over its domestic commerce?"

Only after we have determined the limit of the Congressional power, can we ascertain under the tenth amendment what other and additional power has been reserved either to the states or to the people. In determining the respective jurisdictions of Congress and the states over the subject of commerce, we are confined to the interpretation of the provisions of the federal Constitution and in that instrument the only provisions which relate to the subject are the commerce clause and the provision of Article I, section 9 hereinbefore quoted which forbade Congressional prohibition prior to 1808 of the migration or importation of such persons as any state might see fit to admit. We are, therefore, practically confined to the commerce clause and its interpretation in the determination of the limits of the power of Congress and the extent of the power of the states over commerce. The fifth amendment has no application in the determination of the respective spheres of jurisdiction of the nation and the state. The effect of that amendment in giving

to individuals the right to protest against the exercise by Congress of any of its powers in such manner as to deprive the individual of life, liberty or property without due process of law is considered in the following subdivisions of this Brief. The point which we desire to make here is that that amendment throws no light on the question of the extent to which the Congressional power over interstate commerce may be expanded into fields which the federal government has not heretofore occupied.

That Congress may reach conditions of manufacture and other acts which take place prior to transportation in interstate commerce is illustrated by the *Meat Inspection Act (34 Stat. L. pp. 675 and 1260)* and *section 9 of the Pure Food and Drugs Act.* The Meat Inspection Act provides that no meat may be shipped in interstate commerce unless labelled in accordance with the provisions of the act and that inspectors may enter the establishments for the purpose of such inspection. The constitutionality of this act has never been questioned. Section 9 of the Pure Food and Drugs Act provides that no dealer who ships in interstate commerce adulterated or misbranded articles shall be prosecuted if he can establish a guarantee from the manufacturer from whom he purchased the article that the same is not adulterated or misbranded and that in such case the party making the guarantee shall be amenable to prosecutions. In *United States vs. Heinle Specialty Co., 175 Fed. 299 (1910)*, a manufacturer was prosecuted for selling adulterated food with a guarantee to a dealer in the same state, the dealer having subsequently shipped the food in interstate commerce. It was contended on behalf of the manufacturer that his connection with the food, that is, its manufacture and sale, was entirely an intrastate matter and that the ninth section of the Pure Food act was, therefore, unconstitutional in that it attempted to penalize acts wholly intrastate. The court refused to accept this argument and in holding the section constitutional said:

> "There is nothing in the act to indicate that there is an effort on the part of Congress to regulate the manufacturing, selling or delivering of any articles of food within the states. The act is intended to prevent adulterated and misbranded foods from being sold in interstate commerce—nothing more; and in order that this may be accomplished it prohibits the party who makes or manufactures the food and who knows what it contains, from falsely assuring an innocent purchaser that its quality and dress lawfully entitles him to sell the commodity in interstate commerce."

In like manner, the proposed child labor legislation does not attempt to regulate either manufacture within a state or intrastate sales, but simply attempts to prevent the products of child labor from being sold in interstate commerce. As was said in the *Hoke case, 227 U. S. 308, 322:*

> "It may be that Congress could not prohibit the manufacture of the article in a state. It may be that Congress could not prohibit in all of its conditions its sale within a state. But Congress may prohibit its transportation between the states, and by that means defeat the motive and evils of its manufacture."

In the Lottery and White Slave cases it was argued that Congress was invading the jurisdiction of the states and was attempting to enact police regulations which under the Constitution were reserved to the states exclusively. The court, in the Hoke case, in holding that Congress was acting within its power, effectually disposed of this contention:

> "The power of Congress under the commerce clause of the constitution is the ultimate determining question. If the statute be a valid exercise of that power, how it may affect persons or states is not material to be considered. It is the supreme law of the land and persons and states are subject to it." (*Hoke vs. U. S. (1913) 227 U. S. 308, 320.*)

Mr. Justice Hughes in replying to this same contention, urged against the Sherley amendment to the Pure Food and Drugs Act, (*Seven Cases vs. U. S. Nos. 50 and 51 January 10, 1916*) said:

> "So far as it is objected that this measure, though relating to articles transported in interstate commerce, is an encroachment upon the reserved powers of the states, the objection is not to be distinguished in substance from that which was overruled in sustaining the White Slave Act. There, after stating that 'if the facility of interstate transportation' can be denied in the case of lotteries, obscene literature, diseased cattle and persons, and impure food and drugs, the like facility could be taken away from 'the systematic enticement of and the enslavement in prostitution and debauchery of women,' the court concluded with the reassertion of the simple principle that Congress is not to be denied the exercise of its constitutional authority over interstate commerce, and its power to adopt not only means necessary but convenient to its exercise, because these means may have the quality of police regulations."

These cases establish the right of Congress to exercise a complete power in the regulation of interstate commerce limited only by the due process clause. Argument to the effect that this power is also

limited by an inherent right of the states, is academic and untenable because wholly contrary to the precedents. The power is granted to Congress in plain and unmistakable terms, without limitation and with the express purpose of ameliorating unsatisfactory and injurious results occasioned by state control. In its exercise of this delegated power, Congress is absolutely unrestrained notwithstanding any indirect economic effects that its regulation may have upon the states. As long as it is regulating articles of interstate commerce and is not arbitrarily depriving persons of liberty or property by arbitrary regulation, Congress is authorized to exercise unlimited power. In the words of Mr. Justice Hughes (*Address before the New York State Bar Association, Jan. 14, 1916*):

> "Thus it is recognized that within its sphere as defined by the Constitution, the nation is supreme. The question is simply of the extent of the federal power as granted; where there is authorized exercise of that power, there is no reserved power to nullify it,—a principle obviously essential to the maintenance of national integrity, yet continually calling for new applications. Thus, regulations required in the exercise of the judgment committed to Congress for the protection of interstate commerce cannot be made nugatory by the mere commingling of interstate and intrastate transactions. To illustrate, Congress has taken account of the practical exigencies of traffic, and of the interdependence of train movements, and has insisted that cars moving on railroads that are highways of interstate commerce shall be suitably equipped to the end that interstate traffic shall not be exposed to unnecessary danger. Again, Congress has asserted its authority to compel interstate carriers to give to interstate traffic reasonable rates without unjust discrimination; and the question whether interstate trade was left to be destroyed by hostile discrimination under the authority of local governments was decisively answered when the Constitution superseded the Articles of Confederation."

So far as the respective jurisdictions of state and nation over commerce are concerned, can there be any doubt under the Congressional practice and the judicial decisions which have been discussed in the preceding sections of this brief that the proposed prohibition of shipments of products of child labor in interstate commerce is within the federal jurisdiction? However much we may think that such power ought not to be within the federal jurisdiction, whatever may be our individual opinions as to the desirable balance of powers between the federal government and the states in this matter, the simple fact is that the federal Constitution as now worded gives Congress power to regulate interstate

commerce and gives the whole of this power to Congress to the entire exclusion of the states. The question is not what the Constitution ought to provide, but what it does provide. The constitutionality of the proposed legislation is not to be determined by our ideas as to how the commerce clause ought to be interpreted but by the Congressional practice and judicial decisions which stand as precedents for its proper interpretation. On this basis the proposed federal child labor bill is clearly within the federal jurisdiction and if it is unconstitutional it must be for reasons other than its interference with the powers of the states.

This brings us to the consideration of the most important problem involved in the constitutionality of the proposed legislation, namely, What is the extent of the right of the individual under the fifth amendment to say to the federal government: "You cannot exercise even the powers expressly delegated to you in such manner as to deprive me of my property or liberty without due process of law?"

V. The power of Congress to prohibit shipment or transportation in interstate commerce is limited only by the requirement of the fifth amendment that such prohibition shall not constitute a deprivation of individual rights without due process of law; i. e. that such prohibition shall not be an arbitrary or unreasonable interference with the individual's rights of property or liberty of contract.

The preceding sections of this brief point out that aside from the provision of Article I, section 9 respecting Congressional prohibition of the migration of slaves and the commerce clause itself, there is nothing in the federal Constitution which in any way limits or affects the Congressional power over interstate commerce except the fifth article of the amendments which provides: "No person shall be 'deprived of life, liberty or property without due process of law'." This amendment, it has also been pointed out, does not affect the issue which arises between the nation and the state in regard to their respective jurisdictions over commerce, but is simply a guarantee to the individual of protection against the arbitrary action of the federal government. The fifth amendment protects the individual against federal action depriving him of life, liberty or property without due process of law in precisely the same way that the

fourteenth amendment protects him against state action depriving him of life, liberty or property without due process of law. It neither limits the federal power in the interest of state power nor gives to the state any right to object to the extent or the manner in which the federal government exercises its powers. This amendment limits the federal government in the exercise of its express powers in precisely the same way that the fourteenth amendment limits the state government in the exercise of those inherent powers which are ordinarily described by the courts as the state's police power.

In the *Lottery Case, 188 U. S. 321, 362 (1903)*, it was argued that the principle which would justify the exclusion of lottery tickets from interstate commerce would lead necessarily to the conclusion that any article of whatever kind or nature could be excluded by Congress regardless of the motive or purpose of such exclusion. Replying to this contention, Mr. Justice Harlan said:

> "It will be time enough to consider the constitutionality of such legislation when we must do so. The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of Commerce among the states. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress, to regulate commerce among the states, although plenary, cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument."

Obviously, Mr. Justice Harlan's reference is to the fifth amendment for that is the only other clause of the Constitution which limits the Congressional commerce power.

Whether the fifth amendment limits the power of Congress to prohibit the transportation of particular property in interstate commerce depends on the question whether such prohibition amounts to a deprivation of property without due process. This brings up the questions: to what sphere has the individual a right to ship goods in interstate commerce and what amounts to deprivation without due process?

The exact meaning of this "due process" clause like similar clauses in the fourteenth amendment and in the state Constitutions has never been definitely settled. Comparatively few cases have arisen which involve the meaning of this clause in the fifth

amendment. Numerous cases, however, have been decided involving the effect of the similar due process clause in the fourteenth amendment. These cases indicate that the due process limitation is intended to protect the individual from an arbitrary exercise of the powers of government, from legislation which interferes with private rights or interests to an extent that shocks existing conceptions of what is fundamentally fair and just under the circumstances to which it applies.

The following definitions have been pronounced by the Supreme Court:

> "Due process of law within the meaning of the (fourteenth) amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." *Giozza vs. Tiernan, 148 U. S. 657, 662, (1893).*

To the same effect see *Yick Wo vs. Hopkins, 118 U. S. 356, 367 (1886); Leeper vs. Texas, 139 U. S. 462 and 468 (1891); Yesler vs. Commissioners, 146 U. S. 646, 655 (1892); Duncan vs. Missouri, 152 U. S. 377, 382 (1894).*

> The words "due process of law," "were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." *Bank vs. Okely, 4 Wheat. 235, 244 (1819); Twining vs. N. J. 211 U. S. 78, 101 (1908).*
>
> "The great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen." *Dent vs. W. Va., 129 U. S. 114, 124 (1889).*

The due process clause in the fifth amendment is identical with that in the fourteenth amendment. This pledge of individual rights and liberties is in the Constitution in a two-fold sense; in the fifth amendment it is a limitation upon the powers of the national government; in the fourteenth amendment it is a limitation upon the powers of the states. (*Davidson vs. New Orleans, 96 U. S. 97, 101 (1878); Hallinger vs. Davis, 146 U. S. 314, 319 (1892).*) Indeed, the Supreme Court has said that these two clauses bear the same construction in regard to the meaning of the phrase "due process of law." (*Slaughter House Cases, 16 Wallace 26, 80 (1872); Tonawanda vs. Lion, 181 U. S. 389, 391 (1901); Twining vs. N. J. (supra).*)

Therefore, it may be argued, though it has never been directly decided, that an act of Congress which excludes an article from

interstate commerce without apparent reason violates the requirements of the "due process" clause. Assuming that prohibition without any reason would be a violation of due process, the question becomes one of reasonableness of the prohibition of transportation of a particular article. This restriction on prohibition is implied by the Supreme Court's language in *U. S. vs. Marigold, 9 Howard 560 (1850)* where it was said that any article of commerce "may be partially or wholly excluded when either measure shall be demanded by the safety or by the important interests of the entire nation."

It has always been an established constitutional principle that all rights of life, liberty, and property are held subject to regulation by the sovereign in the interests of the public welfare. The interests of the individual must yield to the higher interests of the community. So long as such regulations are reasonable they may interfere with private property without violating the due process clause. It is now well settled, so well that citation of cases is unnecessary, that a state statute containing reasonable police regulation, though it interferes with personal or property rights, does not constitute a deprivation thereof without due process and is therefore constitutional, despite the due process clause of the fourteenth amendment.

In *Chicago Railroad Company vs. McGuire 219 U. S. 549, 567 (1911)*, it is said:

> "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community."

The scope of this power to regulate in the interests of the public good, commonly called the police power, has never been definitely determined. For many years the decisions of the Supreme Court seemed to restrict it to laws passed for the protection of the health, morals, or safety of the public. But later decisions have given it a broader scope and, at the present time, it may properly be said to include all matters which are immediately necessary or advantageous to the welfare of the community.

In the case of *McLean vs. Arkansas, 211 U. S. 539 (1909)*, the court held constitutional a state statute requiring coal to be weighed before screening, as a basis for determining miners' wages. In the opinion in this case, the principles which underlie the validity of

legislation passed presumably in the exercise of the police power were stated as follows (*p. 547*):

> "It is then the established doctrine of this court that the liberty of contract is not universal, and is subject to restrictions passed by the legislative branch of the Government in the exercise of its power to protect the safety, health and welfare of the people.
>
> It is also true that the police power of the state is not unlimited and is subject to judicial review and, when exerted in an arbitrary or oppressive manner, such laws may be annulled as violative of rights protected by the Constitution. While the courts can set aside legislative enactments upon this ground, the principles upon which such interference is warranted are as well settled as is the right of judicial interference itself. The legislature being familiar with local conditions is primarily the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question affords no grounds for judicial interference unless the act in question is unmistakably and palpably in excess of legislative power."

In *Jacobson vs. Massachusetts, 197 U. S. 11 (1905)*, in which a state compulsory vaccination law was held constitutional, the court said (*p. 31*):

> "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects or is beyond all question a plain palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution."

In *Chicago Railroad Company vs. McGuire* (*supra*) in which it was decided that a state may define the liability of a railroad company to its employee for negligence and may constitutionally prohibit contracts limiting liability for injuries made in advance of the injury, the court said (*p. 569*):

> "The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

In the recent case of *Noble State Bank vs. Haskell, 219 U. S. 104 (1911)*, in which the Bank Depositors' Guarantee Fund Act of Oklahoma was held constitutional as an exercise of the state's police power, Mr. Justice Holmes defines the scope of the police power as follows (*p. 111*):

> "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

A reasonable police regulation is, therefore, not a violation of the due process clause in the fourteenth amendment. A police regulation will not be held to be unreasonable and therefore unconstitutional unless it is an arbitrary and oppressive interference with personal or property rights without that justification which arises from existing conditions detrimental to the public health, safety, morals or welfare to the betterment of which it bears some substantial relation. If this be the test which determines the constitutionality of an exercise of the state's police power to legislate for the common good, notwithstanding the guarantee of due process contained in the fourteenth amendment, we may confidently assert that a test not less favorable to its constitutionality will be applied to a Congressional exercise of the commerce power in the interest of the common good notwithstanding the due process clause of the fifth amendment. In other words, the test to be applied to determine what is due process under the fifth amendment is no more strict than that applied to the determination of the same question when it arises under the fourteenth amendment. The police power of the state is either a general inherent power of the sovereign government without expression in the state Constitution or it is an exception to the limitation contained in the due process clause engrafted on that limitation by judicial decision. The power of Congress to regulate interstate commerce in the interest of the public welfare, if a police power at all, is part of the express power delegated by the Constitution to Congress. In the determination of the effect of the due process clause on the exercise of this power to legislate for the public good, it is not to be expected that the courts will confine the power of Congress, which is express within more narrow limits than the power of the states, which is general, inherent, or the result of an exception engrafted by judicial decision upon a constitutional limitation.

Further, Congress in the exercise of the power to regulate interstate commerce may either regulate or prohibit that commerce not arbitrarily or unreasonably, but nevertheless freely and effectively when conditions detrimental to the public welfare reasonably call for some regulation. The Congressional action in such case will be set aside as unconstitutional only when clearly unreasonable and arbitrary. As the Supreme Court has said with reference to the exercise of the state's police power:

> "The mere fact that a court may differ from the legislature in its views of public policy or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference unless the act in question is unmistakably and palpably in excess of legislative power."

The effect, therefore, of the fifth amendment on the congressional commerce power is simply to authorize the individual to assert his constitutional guarantee of due process, to restrain the enforcement of regulations of interstate commerce which are wholly arbitrary and unreasonable. It does not affect the validity of reasonable regulations substantially related to the betterment of evil conditions existing in the nation. It is impossible to lay down in advance any fixed rules which will enable us in all future cases to separate the reasonable from the unreasonable regulation. Every regulation must stand or fall on its relation to the common welfare under all the circumstances existing at the time of its enactment. To him who asks for the application of this general argument to suppositious cases, as for example whether Congress could prohibit the passage of sound wheat from Minnesota to Wisconsin, we can only reply in the words of Mr. Justice Harlan in the Lottery Case:

> "It will be time enough to consider the constitutionality of such legislation when we must do so."

Its constitutionality will depend upon its reasonableness and its reasonableness will depend on the existence or non-existence of conditions which justify this interference by Congress with the individual's right to find for his product a market in interstate commerce.

It remains to apply this general principle to the proposed prohibition of interstate commerce in the products of child labor. Does such a prohibition bear such substantial relation to the public

health, the public safety, the public morals or the public welfare as to make it a reasonable regulation of interstate commerce in the interest of the common good, or is it an unreasonable, arbitrary interference with the right to find and use an interstate market, without that justification which arises from existing evil conditions toward the betterment of which it may reasonably be expected to contribute?

VI. The prohibition of shipment in interstate commerce of the products of child labor is a reasonable exercise of the congressional commerce power in the interest of the public welfare.

The preceding sections of this memorandum establish the proposition that the commerce clause of the Constitution authorizes Congress to prohibit the transportation in interstate commerce of specified persons or things; that Congress possesses power similar to the state's police power to regulate or prohibit commerce in the interest of public health, safety, welfare or morals; that in the exercise of this police power under the commerce clause Congress is limited only by the provision of the fifth amendment to the federal Constitution which prohibits the taking of property or liberty without due process of law; and that despite the fifth amendment Congress may enact valid police regulations if they be reasonably necessary to remedy existing conditions detrimental to the public good. The Keating-Owen bill, as introduced by Congressman Keating on January 7th, 1916, provides that no producer, manufacturer or dealer shall ship or deliver for shipment in interstate commerce the product of any mine or quarry, situated in the United States, which has been produced, in whole or in part, by the labor of children under the age of sixteen years, or the product of any mill, cannery, workshop, factory or manufacturing establishment, situated in the United States, which has been produced, in whole or in part, by the labor of children under the age of fourteen years, or by the labor of children between the age of fourteen years and sixteen years, who work more than eight hours in any one day, or more than six days in any week, or before the hour of 7 post meridian or after the hour of 7 ante meridian.

Congress, by enacting this bill would prohibit the shipment in interstate commerce of certain products of child labor. That Congress, under its power to regulate interstate commerce, may

prohibit shipment in that commerce, has been proved. In order to sustain the constitutionality of the Keating-Owen bill it is, therefore, only necessary to show that the prohibition of shipment of these child labor products bears such a relation to the public health, safety, welfare or morals as to bring it within that class of police legislation which congress may pass under the commerce clause despite the fifth amendment.

The Supreme Court has held that a regulation of interstate commerce by Congress may have the quality of a police regulation; that the powers "conferred on the nation are adapted to be exercised * * * to promote the general welfare, material and moral." As we have seen, Congress will not be held to a stricter test under the fifth amendment as to the validity of police regulations of commerce than that applied under the fourteenth amendment to police legislation of the states. State legislation directly prohibiting the employment of children in the occupations and under the circumstances stated in the pending bill has been held valid police legislation under the fourteenth amendment. The employment of children of tender years in dangerous or confining occupations has long been recognized as a serious evil and a menace to the future of the race. As early as 1879 twenty-one states had laws regulating or prohibiting it and this number has constantly increased. (*See Progress and Uniformity in Child Labor Legislation by William F. Ogburn, Columbia University Studies in History, Economics and Public Law, Vol. 48, No. 2, 1912.*) The courts of last resort in a majority of the states have held that state legislatures may, under the police power, fix an age limit below which children may not be employed, the minimum age limit upheld by these decisions ranging from twelve years upwards. (*See note in U. S. Supreme Court Rep., 53 L. Ed. 245, 246.*) The preponderant moral sentiment of the community is against child labor. It is inconceivable that any court would hold that such legislation has no real or substantial relation to the protection of the health and morals of the people. As a matter of fact, the Supreme Court has recently held that state child labor legislation is a valid exercise of the state police power (*Sturges Mfg. Co. vs. Beauchamp, (1913) 231 U. S. 320, 325*). In the opinion in that case Mr. Justice Hughes said:

> "As it was competent for the state in securing the safety of the young to prohibit such employment altogether, it could select the means

> appropriate to make its prohibition effective and could compel employers at their peril to ascertain whether those they employed were in fact under the age specified. The imposition of absolute requirements of this sort is a familiar exercise of the protective power of government."

The Supreme Court will take notice of the fact that in the greater part of this country child labor legislation has already been enacted and upheld as a reasonable exercise of the police power. In the Coppage vs. Kansas case the Supreme Court in holding unconstitutional legislation forbidding discharge of union men, referred to the fact that such laws had been generally condemned as unconstitutional in the several states. These state child labor statutes are ineffective to prevent interstate commerce in products of child labor, but their universal approval as valid police regulations is persuasive evidence that they are reasonable regulations of rights of property and of liberty of contract.

A state in the exercise of its police power may prohibit the employment of child labor in the manufacture of goods within the state, but it has not the power to complete its policy by prohibiting the importation from other states of the products of child labor. It is well established that a state is powerless to exclude the introduction and sale within its borders, in original packages, of recognized articles of interstate commerce (*Brown vs. Maryland, (1827) 12 Wheat. 419; Leisy vs. Hardin (1890) 135 U. S. 100*). Such a regulation interferes with interstate commerce and consequently is unconstitutional. It is true that in the exercise of the police power in protecting citizens against fraud, a state has been permitted to make certain regulations which place no burden upon commerce among the states (*Plumley v. Massachusetts (1894) 155 U. S. 461 (prohibition of the sale of oleomargarine which is in imitation of yellow butter); Crossman v. Furman (1904) 192 U. S. 129 (artificially colored coffee beans); Campagnie Francaise v. Louisiana Board of Health (1902) 186 U. S. 380 (persons coming from districts infected with contagious or infectious diseases)*); but as child labor products are not inherently dangerous to the citizens of the state, a direct prohibition by a state of the right to sell them within its borders would be an interference with interstate commerce and consequently void (*People vs. Hawkins (1898) 157 N. Y. 1; People vs. Haynes (1910) 198 N. Y. 622; Opinion of the Justices (1912) 211 Mass. 605*). In each one of these cases the state statute provided that goods manufactured by convict labor

should be stamped so as to indicate the same. These laws applied alike to goods manufactured within and without the state. The courts in each case held the statute unconstitutional as an unlawful interference with interstate commerce. *In People v. Hawkins the court said*: (*p. 17*)

> "A citizen of this state who happens to buy goods made in a prison in Ohio has the right to put them upon the market here on their own merits, and if this right is restricted by a penal law, while the same goods made in factories are untouched, such a law is a restriction upon the freedom of commerce, and the objection to it is not removed by the fact that it may have been enacted in the guise of a police regulation. The validity of such a law is to be tested by its purpose and practical operation without regard to the name or classification that may have been given to it."

In *Opinion of the Justices* (*supra*) the court declares (*p. 606*):

> "The present bill, in our opinion, goes beyond a lawful exercise of the police power in its direct effects upon interstate commerce. Protection of domestic laborers, manufacturers or merchants against the lawful competition from other states by means of discriminating regulations upon goods manufactured in other states, is an immediate interference with interstate commerce. * * * One who purchases prison-made goods in thero states has a right as complete and extensive to sell them upon their own merits as he has to sell private-made goods of like nature."

The same objections would be successfully urged against a statute prohibiting the sale within the state of child labor products imported from another state. The prohibition of the sale of such products of child labor would not further the interests of the citizens of the state except as regards competition and such legislation has been held, in a long line of decisions, to amount to an unlawful interference with interstate commerce:

Welden vs. Missouri (1876) 91 U. S. 276;
Walling vs. Michigan (1886) 116 U. S. 446;
Minnesota vs. Barber (1890) 136 U. S. 313;
Brimmer vs. Rebman (1891) 138 U. S. 78;
Voight vs. Wright (1891) 141 U. S. 62;
Collins vs. New Hampshire (1897) 171 U. S. 30;
Dosier vs. Alabama (1910) 218 U. S. 124.

In *Railroad vs. Husen (1878) 95 U. S. 465, 472* it is said:

> "While we unhesitatingly admit that a state may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the state; while for the

> purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the state beyond what is absolutely necessary for its self-protection."

It may be contended that a state might prohibit the sale of all products of child labor by a lawful exercise of the taxing power. While it is true that the original package rule does not apply where there is a general tax laid upon property which has reached its destination, (*Brown vs. Houston (1885) 114 U. S. 622*) or a tax upon the sale of articles within the state which were not brought from a foreign country (*Woodruff vs. Parham (1869) 8 Wall. 123*), nevertheless such a tax must be for a public purpose (*Loan Association vs. Topeka (1875) 20 Wall. 655; Lowell vs. Boston (1878) 111 Mass. 454*). Thus in the exercise of its taxing power the state is limited by the due process clause in so far as the tax must be for the benefit of the community. A prohibitory tax on the products of child labor would not be valid, therefore, unless a direct prohibition of the sale of such products could be sustained, and it has been shown that such a prohibition as applied to goods imported from other states would constitute an interference with interstate commerce because not being for a public purpose it is not within the police powers of the state (People vs. Hawkins and cases cited above).

Even though it be conceded that the state, by the exercise of its police power, could prohibit the sale of child labor products after such products are no longer part of interstate commerce, or could, under the power to levy a general property tax, place a prohibitory tax upon them, such measures would be absolutely unenforceable. The state has no method of determining what imports from other states are manufactured by child labor because the goods themselves show no traces or marks of it. In order to effectively enforce such a law it would be necessary for each state to place an inspector in every mine, quarry and manufacturing establishment in the United States. This method is both impracticable and illegal. No state could afford to employ the necessary number of inspectors, and even if this were done, the act authorizing the inspection in other states would be of doubtful constitutionality as it is settled that state laws have no extra territorial effect, each state being supreme within its sphere (*Buckner vs. Finley (1829) 2 Pet. 586; Bank of Augusta vs. Earle, (1839) 13 Pet. 519; O. & M. Ry. vs. Wheeler (1862) 1 Black. 286*). Therefore, it is obviously impossible for one state to prohibit

the importation from other states of the products of child labor. Every means of effectively stamping out this national evil has been taken from the states and the only possible method of effecting the complete prohibition of child labor is by national control. In prohibiting the interstate shipment of such products, Congress is exercising its power over interstate commerce to advance the public welfare by supplementing and making effective the police legislation of the states.

As has been pointed out in an earlier part of this brief, the Constitutional Convention took from the individual states the power to prohibit importations and must have intended to lodge that important power in the only agency to which power over interstate commerce was given, viz. Congress. It is not unfair to say that the Convention intended that Congress should protect by uniform regulation the states which were thus rendered impotent to protect themselves. As a matter of fact, considerable opposition to effective child labor legislation in the various states has been founded on this very fact—that the state cannot exclude the products of child labor manufactured in another state. The manufacturers of a state which has enacted advanced child labor legislation are at a disadvantage in competition with manufacturers of adjoining states having no such legislation because of the latter's unrestricted privilege of shipping their products in interstate commerce. Hence, there can be no effective prohibition of child labor and the necessity of Congressional regulation becomes apparent.

Fortunately the reasonableness of a prohibition of shipment of child labor products does not depend solely on general argument. Similar prohibitions have been upheld by the Supreme Court as reasonable exercises of the commerce power in the interest of the public welfare. In the Lottery Cases the Supreme Court held constitutional the act of Congress prohibiting shipment in interstate commerce of lottery tickets and literature. In the White Slave cases the court held constitutional the act of Congress prohibiting transportation in interstate commerce of women and girls, or inducing them to travel therein, for immoral purposes.

Admitting the force of all these precedents for police regulations affecting interstate commerce, the opponents of the pending bill will seek to distinguish them by pointing out that in every previous instance the prohibition of transportation has had for its purpose

the protection of the consumer, has aimed to prevent the carrying through interstate commerce of the objectionable person or thing to the place or the person where its harmful effects are to be accomplished. Whereas in the case of the pending legislation the prohibition is aimed not at the protection of the consumer but at the protection of the producer, not the community which uses the products of the labor of children but the community in which such children reside.

The fact that much of our previous legislation under the commerce clause has been confined to protection of commerce for the consumer is merely accidental. Even the pending legislation may have the ultimate effect of protecting the consumer. The amount of benefit of protection to the consumer is immaterial; the very fact that there is any such benefit or protection is sufficient. The prohibition of transportation in interstate commerce of the products of child labor may well be expected to improve the quality of the goods sold in interstate commerce. It is reasonable to presume —at least the courts cannot override a determination by Congress that it is reasonable to presume—that goods manufactured by persons of more mature age will be of higher quality and more substantial value than if manufactured by children under fourteen. If Congress believes that the prohibition of transportation of the products of child labor will tend to improve the quality of articles sold in interstate commerce as well as to protect the health, morals and welfare of the public, surely this is not such a culpable abuse of the Congressional discretion as to warrant the court's setting aside of the Congressional action.

A bill introduced in the present Congress by Congressman Adamson, chairman of the House Committee on interstate commerce, illustrates the relation of this kind of regulation of commerce to the protection of the consumer. Congressman Alexander's bill prohibits shipment in interstate commerce for purposes of slaughter of bull calves less than two years old or of heifers less than seven years old. Obviously this is not a health measure. These ages have no relation to the value of the meat as food. The only relation of this legislation to the protection of the consumer is that it *protects the ultimate supply*. It protects the ultimate supply of bulls and heifers; while the pending child labor bill protects the ultimate supply of men and women.

The distinction between protection to consumer and producer is founded upon the narrow view of the police power which would make it depend upon, not the benefit to the general public, but the benefit of individuals, resulting from such legislation. This is an erroneous view of the power. Prohibition of transportation of lottery tickets was upheld by the Supreme Court, not on the ground of the benefit done to the individual who might be affected to his detriment by the purchase of lottery tickets, but on the ground that the public welfare is benefited to the extent that those individuals are protected against the temptation to lottery gambling. In the same manner legislation limiting hours of labor has been sustained under the police power, not because of the benefit accruing to the individuals whose effort is affected, but because of the benefit derived by the general public from a decrease in the burdensome toil of a large body of its citizens. The important point is that no such legislation would be supported under the police power because a hundred or a hundred thousand individuals were to be protected from some harmful consequence if that harmful consequence did not involve detriment to the public welfare. It is the public welfare, not the welfare of a large number of individuals, which justifies the legislation. Now, if this be true it matters not a bit whether the legislation affects persons to whom goods are carried or persons from whom those goods are carried, provided only that in either case the carriage is incidental to the continuance or the furtherance of conditions which are to the detriment of the public welfare. Take for example the White Slave legislation. It is true it prohibits transportation which will protect the morals of individuals who might be affected after transportation; but it is not in the interest of these individuals that such legislation is enacted and upheld. The real justification for such legislation is the establishment of a high standard of morals and the maintenance of that standard by the prevention of a continuance of such transportation.

It is idle to talk about such legislation as aimed to protect the consumer. It is idle to attempt to distinguish it from legislation aimed to protect children from exploitation by greedy employers. The simple fact is that in both instances the legislation is justifiable, if at all, in the interest of developing and sustaining ideals of public morality and standards of public health and welfare. The prohibition is aimed at the use of interstate commerce to further practices which

violate those higher ideals, the realization of which is sought by the community in its law.

What essential difference is there between legislation protecting a few individuals from the harm which may follow their transportation from one state to another when that harm will be detrimental to the public morals, and legislation which will prevent the employment of children of tender years when such employment will be detrimental to the public health and welfare? What is there in the fact that in one case the public welfare is affected by practices which follow transportation and in the other case is affected by conditions which precede transportation, which would justify holding the one prohibition a reasonable exercise of the police power in the public interest and the other an arbitrary exercise of the commerce power?

The argument for the distinction between the consumer and the producer as a test of the constitutionality of Congressional police legislation under the commerce clause is not founded on any decision or any language of the supreme court. Although the lottery, the pure food and the white slave acts may, as a matter of fact, operate to prevent evil conditions after interstate transportation, the cases holding them constitutional were not decided on any principle or theory either expressly or impliedly so limited. On the contrary, these cases establish a principle which is equally applicable to conditions arising before or after transportation, namely, that Congress for the purpose of protecting the public health, morals and welfare, may regulate interstate commerce to the extent of prohibiting transportation of specified persons or things. In short, that regulations of interstate commerce as was said in *Hoke vs. United States, 227 U. S. 308, 323*, "may have the quality of police legislation." In that case it is also said: "it may be that Congress could not prohibit the manufacture of the article in a state, it may be that Congress could not prohibit in all of its conditions its sale within a state, but Congress may prohibit its transportation between the states and by that means defeat the motives and evils of the manufacture." To "defeat the motives and evils of the manufacture" is the very purpose of the pending bill. The evils of the manufacture, namely, the labor of very young children, can be defeated by Congress by prohibiting interstate transportation of the product of that labor. In other words, the use in manufacturing of methods which are injurious to the health, morals and welfare of the people justifies

Congress in prohibiting interstate transportation of the article manufactured in an effort to prevent such evil methods or conditions. It means that evil conditions will not be permitted to thrive by the unrestricted use of the channels of interstate commerce.

Congress, it must be remembered, has no direct regulative control over either the mode of consumption or method of production. The prohibition of transportation of lottery tickets, adulterated or misbranded food and drugs, and of women, was based not on a desire to protect or advance interstate commerce itself, nor was it intended to protect particular individuals from particular harm, but as expressly stated by the supreme court, it was an exercise of the commerce power for the protection and advancement of the health, morals and welfare of the country. If it be true as declared in the Hoke case that the power over commerce conferred on the nation may be exercised "to promote the general welfare, material and moral," what possible justification can there be for placing the consumer in a peculiar class and granting him the privilege of police protection from the national government, while denying that protection to the unfortunate producer? It is submitted that from the cases when the regulation of commerce is not for the protection or advancement of that commerce itself (as in the case of transportation of explosive or combustible materials) the only test of constitutionality of the prohibition is this: Is the regulation reasonably designed for the protection of the health, morals, safety or general welfare of the public? If the law in question survives that test it is within the constitutional power of Congress and it matters not whether the regulation is in the interest of producer or consumer. In a recent unpublished article Professor W. W. Willoughby of Johns Hopkins University, one of the leading authorities on the constitutional law of this country, thus expresses his opinion of the soundness of the suggested distinction:

> "This distinction between conditions of production and purposes or methods of use, of commodities, though a real one, will probably not be held controlling. In neither case has Congress a direct regulative power—over neither the conditions of production nor the mode or use of consumption. If, therefore, in either case the prohibition can be construed to be, in fact, a regulation of interstate or of foreign commerce, neither the ultimate effect nor the legislative intent embodied in the law may be inquired into by the courts. In result, then, it is to be admitted that the lottery case is authority for the doctine that interstate carriers may be prohibited from carrying,

> or shippers or manufacturers from sending, from state to state, and to foreign countries, commodities produced under conditions so objectionable as to be subject to control as to their manufacture by the states under an exercise of their police power or of a character designed or appropriate for use which might similarly be forbidden by law."

If Congress passes the Keating-Owen bill its very enactment will constitute a Congressional declaration that child labor is a national nuisance, that its evil effects on the public health and welfare cannot be effectively prevented by individual state action so long as one state refuses to enact the necessary legislation, and that Congressional regulation under the power to regulate interstate commerce is demanded in the interest of the public morals, health and welfare. What can the supreme court say to such a declaration? Would that court undertake to refute it? And without refutation would it not entirely justify a regulation of commerce to prevent the evils?

Summarizing the previous decisions Mr. Justice McKenna in the Hoke case said:

> "Surely if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs the like facility can be taken away from the systematic enticement to and the enslaving in prostitution and debauchery of women."

And to this we may add that if for these purposes the facility of interstate commerce can be taken away, then it can likewise be taken away from the exploitation of children of tender years, to the detriment of our future citizenship.

It may be objected that the case of *Adair vs. United States 208 U. S. 161 (1907)* is authority against the constitutionality of the proposed legislation. In the Adair case the supreme court held unconstitutional an act of Congress prohibiting certain corporations engaged in interstate commerce from discriminating against members of trade unions in the employment or discharge of men. The basis of this decision was that the act constituted a deprivation of the liberty of contract without due process of law. The court discussed in great detail the limitations upon Congressional control over interstate commerce imposed by the fifth amendment and concluded that the regulation in this act violated the due process clause. That this conclusion is justified and proper is declared by the same court

in *Coppage vs. Kansas, 236 U. S. 1 (1914)* where a similar statute of the state of Kansas was held to be a deprivation of the liberty to contract without due process of law. In this case the court said (*p. 21*) "The decision in the Adair case is in accord with the almost unbroken current of authorities in the state courts. * * * It is not too much to say that such laws have by common consent been treated as unconstitutional." For decisions of state courts holding similar statutes not within the scope of state police power see note, *Vol. 52 Lawyers U. S. Supreme Court Report, p. 436.*

Mr. Justice Harlan, in the course of the opinion in the Adair Case, said that such a regulation of the contract of employment was not a regulation of interstate commerce, as there was no "possible legal or logical connection * * * between an employee's membership in a labor organization and the carrying on of interstate commerce" because the relation "cannot have, in itself and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services."

A careful analysis of the Adair case shows that this statement is not the real basis of the court's decision. The decision in the case was based solely on the fact that the act of Congress constituted a deprivation of the liberty of contract without due process of law. In the subsequent case of *Coppage vs. Kansas* where a state statute identical in effect with that involved in the Adair case was declared unconstitutional, the court, discussing the decision in the Adair case, said:

> "The court held that portion of the act upon which the conviction rested to be an invasion of the personal liberty as well as of the right of property guaranteed by the fifth amendment."

Many cases in the federal courts interpreting the effect of the Adair decision put upon it the same construction as that just quoted from the Coppage case. *McLean vs. Arkansas, 211 U. S. 545 (1909), Chicago, Burlington and Quincy R. R. Co. vs. McGuire, 219 U. S. 549 (1911); Goldfield Consol. Mines Co. vs. Goldfield, M. U. No. 220, 159 Fed. 500 (1907); Hitchman Coal and Coke Co. vs. Mitchel, 172 Fed. 963 (1909); Zikos vs. Ore R. and Navigation Co., 179 Fed. 893 (1910); Irving vs. Joint Dist. Council U. B. of Carpenters, 180 Fed. 896 (1910).*

But even if this statement of Mr. Justice Harlan in the Adair case be given authoritative effect as a precedent, it must be remembered that in this portion of his opinion the learned judge was dealing not with the limiting effect of the fifth amendment on the power of

the courts to interfere with personal or property rights, but with the question what is interstate commerce. In other words, what are the limits of the federal jurisdiction as distinguished from the state jurisdiction over commerce? That portion of the opinion in which the statement just quoted is contained, is introduced by the following language: "Let us inquire what is commerce, the power to regulate which is given to Congress." The general language made use of by the learned justice in answering this question is of importance if at all not in a case involving the restrictive effect on the exercise by Congress of a power over interstate commerce which is clearly within the federal jurisdiction, but only in cases like the employer's liability case where the question is what is interstate commerce and where does the federal jurisdiction over commerce end and the state jurisdiction begin. Mr. Justice Harlan's general statement is to the effect that the federal jurisdiction does not run to the point of the making or the terminating of a contract of employment between an interstate carrier and its employee. Even on this point his statement must be regarded as having been qualified by the subsequent cases. But in any event, Mr. Justice Harlan's statement has relation not to the effect of the due process clause in the fifth amendment on an undoubted exercise by Congress of its power over interstate commerce, but to the relationship between the powers of the nation and the state under the federal Constitution. This question has been thoroughly discussed under subdivision 4 of this brief.

It is important, however, to note that in the proposed child labor legislation, Congress is not attempting to regulate contracts of employment by virtue of its control over the instrumentalities or agencies of interstate commerce. It does not seek to extend its jurisdiction by directly regulating contracts of employment as was done in the Adair case. So far as the proposed legislation is concerned the employer is free to conduct his business with or without child labor. All that Congress does if it enacts the child labor bill is to say to the employer that if he chooses to employ children he shall not have the facilities of interstate commerce for the distribution and sale of his product. This is not a regulation of conditions of employment. It is a regulation of the subject matter of interstate commerce with the incidental effect on the conditions of employment. But as has been said, the fact that it has such incidental effect is not

material, provided it be established that it is a regulation of interstate commerce.

It was argued in the first employers' liability case *Howard vs. Illinois R. Co. 207 U. S. 463, 502* that one who engages in interstate commerce thereby subjects all of his business concerns, including his intrastate business, to the regulating power of Congress. This argument was refuted by Mr. Justice White, now Chief Justice, in the sweeping and vigorous language which such a broad claim of congressional power might be expected to inspire. He says:

> "To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well-founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the state as to all conceivable matters which from the beginning have been, and must continue to be, under their control as long as the Constitution endures."

This is the language usually quoted by opponents of the child labor and similar legislation. It must be remembered, however, that Mr. Justice White is here discussing the question: what is interstate commerce; and is considering the relationship between the national government and the states. The legislation under consideration and the arguments pertaining thereto involved congressional regulation of the instrumentalities or agencies of interstate commerce and legislative power to directly control those agencies. The question involved was identical to that raised by the language in the Adair case which has just been discussed. The court declares that direct control of intrastate commerce by Congress is an unconstitutional assumption of power. The rebuff to the exponents of any other doctrine was well merited.

The constitutionality of federal child labor legislation is not based on any such broad assumption of Congressional power. The proposed legislation does not depend on the doctrine that one who

engages in interstate commerce thereby subjects his entire business to the regulation of commerce. Rather it depends on the oft applied principle that the power to regulate the subject matter of commerce includes the power to pass police regulations to promote the health, safety, welfare and morals of the country. If Congress were proposing to forbid the employment of children in the mining and manufacturing establishments of the country the language of Chief Justice White in the above case would be applicable, but as Congress is only excluding certain articles from the channels of that commerce over which it has undoubted control, this language is of no import. As stated above in the discussion of the Adair case, the fact that a regulation of interstate commerce in products of child labor may have the incidental effect of discouraging the employment of children in the mining and manufacturing establishments of the states does not affect the question of its constitutionality. As long as Congress is regulating interstate commerce, the only limitation upon such regulation is the "due process clause" and not the "interstate commerce clause."

To those who fear to take the step proposed in the federal child labor bill because of its possible unconstitutionality, it should be pointed out that no one knows the limits of the power of Congress over interstate commerce. The Supreme Court has from time to time extended the limits of that power beyond preconceived notions of its limitations. If this legislation is desirable, if there exists evils detrimental to the public welfare which it will tend to correct, its enactment by Congress certainly ought not to be delayed merely because of the possibility of its being held unconstitutional by the Supreme Court. No one can say that it is unconstitutional. And if the mere fear of an adverse decision by the Supreme Court were to prevent the passage of legislation by Congress there would be no development of our constitutional law. Who could have said, prior to the lottery cases, that the policy of the lottery legislation would be upheld by the Supreme Court of the United States? Who could have said, prior to the Hoke case, that the anti-white slave legislation would be held constitutional? Yet if these acts had not been passed merely because there was a possibility that the Supreme Court would declare them unconstitutional, individual states might still pass drastic laws and yet be helpless to prevent the flourishing of lotteries and the white slave trade.

This brief began by asking the question, Can Congress use its power to regulate interstate commerce to stamp out child labor in mines and factories? It concluded with the answer, first, Yes, in the same manner that Congress can use the same power to stamp out lotteries, impure foods, prostitution, etc. And, second, Yes, to the extent that Congress can close the channels of interstate commerce to the products of child labor and thereby prevent the exploiters of child labor finding an interstate market for its products.

The argument in support of these conclusions cannot be better summed up than by repeating the language of Mr. Justice Harlan in the Lottery Cases, changed only by substituting the underscored words for words referring to lotteries:

> "If a state, when considering legislation for the suppression of child labor within its own limits, may properly take into view the evils that inhere in mining or manufacturing, in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of the products of such labor from one state to another. (*p. 356*) * * * As a state may, for the purpose of guarding the morals of its own people, forbid all child labor within its limits, so Congress, for the purpose of guarding the people of the United States against the 'wide-spread pestilence of child labor' and to protect that commerce which concerns all the states, may prohibit the carrying of the products of such labor from one state to another. * * * We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. (*p. 357*) * * * If the carrying of the products of child labor from one state to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of the sale of such products, carried on through such commerce, is to make it a criminal offense, to cause such products to be shipped from one state to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce * * * which has grown into disrepute and has become offensive to the entire people of the Nation." (*p. 358*)

National Child Labor Committee

INCORPORATED

ORGANISED APRIL 15, 1904

105 East 22d Street - - - New York City
204 Bond Building - - - Washington, D. C.

OFFICERS

FELIX ADLER, Chairman
V. EVERIT MACY, Treasurer
SAMUEL McCUNE LINDSAY,
HOMER FOLKS, Vice-Chairmen
OWEN R. LOVEJOY, . . General Secretary
A. J. McKELWAY, . Secretary for the Southern States
EDWARD N. CLOPPER, Secretary for the Northern States
JOSEPHINE J. ESCHENBRENNER, Membership Secretary
FLORENCE I. TAYLOR, Publication Secretary

BOARD OF TRUSTEES

FELIX ADLER, Chairman
JANE ADDAMS
LEO ARNSTEIN
HENRY BRUÈRE
FRANCIS G. CAFFEY
HOWELL CHENEY
EDWARD T. DEVINE
HOMER FOLKS
WILLIAM H. HARMON
FLORENCE KELLEY
ADOLPH LEWISOHN
SAMUEL McCUNE LINDSAY
V. EVERIT MACY
CHARLES P. NEILL
ISAAC N. SELIGMAN
LILLIAN D. WALD
STEPHEN S. WISE
JOHN W. WOOD

OBJECTS

To promote the welfare of society with respect to the employment of children in gainful occupations.

To investigate and report the facts concerning child labor.

To raise the standard of public opinion and parental responsibility with respect to the employment of children.

To assist in protecting children by suitable legislation against premature or otherwise injurious employment, and thus to aid in securing for them an opportunity for elementary education and physical development sufficient for the demands of citizenship and the requirements of industrial efficiency.

To aid in promoting the enforcement of laws relating to child labor.

To coordinate, unify, and supplement the work of state or local child labor committees, and encourage the formation of such committees where they do not exist.